

South Carolina Code

Current through all legislation from the 2016 session.

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TITLE 16. Crimes and Offenses
Chapter 23. Offenses Involving Weapons
Article 1. Handguns

- § 16-23-10. Definitions.** When used in this article:
- (1) "**Handgun**" means any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges.
- (2) "**Dealer**" means any person engaged in the business of selling firearms at retail or any person who is a pawnbroker.
- (3) "**Crime of violence**" means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.
- (4) "**Fugitive from justice**" means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.
- (5) "**Subversive organization**" means any group, committee, club, league, society, association, or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure, or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.
- (6) "**Conviction**" as used herein shall include pleas of guilty, pleas of nolo contendere, and forfeiture of bail.
- (7) "**Division**" means the State Law Enforcement Division.
- (8) "**Purchase**" or "sell" means to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn or accept in pawn.
- (9) "**Person**" means any individual, corporation, company, association, firm, partnership, society, or joint stock company.
- (10) "**Luggage compartment**" means the trunk of a motor vehicle which has a trunk; however, with respect to a motor vehicle which does not have a trunk, the term "luggage compartment" refers to the area of the motor vehicle in which the manufacturer designed that luggage be carried or to the area of the motor vehicle in which luggage is customarily carried.

In a station wagon, van, hatchback vehicle, truck, or sport utility vehicle, the term "luggage compartment" refers to the area behind the rearmost seat.

§ 16-23-20. Unlawful carrying of handgun; exceptions. It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

- (1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor's constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers employed as private detectives or private investigators;
- (2) members of the Armed Forces of the United States, the National Guard, organized reserves, or the State Militia when on duty;
- (3) members, or their invited guests, of organizations authorized by law to purchase or receive firearms from the United States or this State or regularly enrolled members, or their invited guests, of clubs organized for the purpose of target shooting or collecting modern and antique firearms while these members, or their invited guests, are at or going to or from their places of target practice or their shows and exhibits;
- (4) licensed hunters or fishermen who are engaged in hunting or fishing or going to or from their places of hunting or fishing while in a vehicle or on foot;
- (5) a person regularly engaged in the business of manufacturing, repairing, repossessing, or dealing in firearms, or the agent or representative of this person, while possessing, using, or carrying a handgun in the usual or ordinary course of the business;
- (6) guards authorized by law to possess handguns and engaged in protection of property of the United States or any agency of the United States;
- (7) members of authorized military or civil organizations while parading or when going to and from the places of meeting of their respective organizations;
- (8) a person in his home or upon his real property or a person who has the permission of the owner or the person in legal possession or the person in legal control of the home or real property;
- (9) a person in a vehicle if the handgun is:
 - (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle; however, this item is not violated if the glove compartment, console, or trunk is opened in the presence of a law enforcement officer for the sole purpose of retrieving a driver's license, registration, or proof of insurance. If the person has been issued a concealed weapon permit pursuant to Article 4, Chapter 31, Title 23, then the person also may secure his weapon under a seat in a vehicle, or in any open or closed storage compartment within the vehicle's passenger compartment; or
 - (b) concealed on or about his person, and he has a valid concealed weapons permit pursuant to the provisions of Article 4, Chapter 31, Title 23;
- (10) a person carrying a handgun unloaded and in a secure wrapper from the place of purchase to his home or fixed place of business or while in the process of changing or moving one's residence or changing or moving one's fixed place of business;
- (11) a prison guard while engaged in his official duties;
- (12) a person who is granted a permit under provision of law by the State Law Enforcement Division to carry a handgun about his person, under conditions set forth in the permit, and while transferring the handgun between the permittee's person and a location specified in item (9);
- (13) the owner or the person in legal possession or the person in legal control of a fixed place of business, while at the fixed place of business, and the employee of a fixed place of business, other than a business subject to § 16-23-465, while at the place of business; however, the employee may exercise this privilege only after: (a) acquiring a permit pursuant to item (12), and (b) obtaining the permission of the owner or person in legal control or legal possession of the premises;
- (14) a person engaged in firearms-related activities while on the premises of a fixed place of business which conducts, as a regular course of its business, activities related to sale, repair, pawn, firearms training, or use of firearms, unless the premises is posted with a sign limiting possession of firearms to holders of permits issued pursuant to item (12);
- (15) a person while transferring a handgun directly from or to a vehicle and a location specified in this section where one may legally possess the handgun.
- (16) Any person on a motorcycle when the pistol is secured in a closed saddlebag or other similar closed accessory container attached, whether permanently or temporarily, to the motorcycle.

§ 16-23-30. Sale or delivery of handgun to and possession by certain persons unlawful; stolen handguns.

(A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to:

- (1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent;
- (2) a person who is a member of a subversive organization;

(3) a person under the age of eighteen, but this shall not apply to the issue of handguns to members of the Armed Forces of the United States, active or reserve, National Guard, State Militia, or R. O. T. C., when on duty or training or the temporary loan of handguns for instructions under the immediate supervision of a parent or adult instructor; or

(4) a person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a firearm, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but a person who is the subject of such an application is entitled to reasonable notice and a proper hearing prior to any such adjudication.

(B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

(C) A person shall not knowingly buy, sell, transport, pawn, receive, or possess any stolen handgun or one from which the original serial number has been removed or obliterated.

§ 16-23-50. Penalties; disposition of fines; forfeiture and disposition of handguns.

(A) (1) A person, including a dealer, who violates the provisions of this article, except § 16-23-20, is guilty of a felony and, upon conviction, must be fined not more than \$2,000 or imprisoned not more than 5 years, or both.

(2) A person violating the provisions of § 16-23-20 is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(B) In addition to the penalty provided in this section, the handgun involved in the violation of this article must be confiscated. The handgun must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated handgun may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell handguns in this State for a handgun or any other equipment approved by the agency, or destroy it. A weapon must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the handgun, the division may keep the handgun for use by its forensic laboratory. Records must be kept of all confiscated handguns received by the law enforcement agencies under the provisions of this article.

§ 16-23-55. Procedure for returning found handgun.

(A) A handgun that is found and turned over to a law enforcement agency must be held for a period of 90 days. During that period, the agency shall make a diligent effort to determine:

(1) if the handgun is stolen;

(2) if the handgun has been used in the commission of a crime; and (3) the true owner of the handgun.

(B) At least twice during the 90-day holding period, the agency shall advertise the handgun with its full description in a newspaper having general circulation in the county where the handgun was found.

(C) After the 90 days have elapsed from publication of the first advertisement, and upon request of the individual who found and turned over the handgun, the agency shall return the handgun to this person if the individual fully completes the application process as described in § 23-31-140 and in federal law, and pays all advertising and other costs incidental to returning the handgun. No handgun may be returned until the individual fully completes the application.

(D) Upon proper completion of the application, the law enforcement agency shall provide copies of the application in compliance with § 23-31-140.

§ 16-23-60. Construction. Provisions of this article must not be construed to grant any additional police powers not authorized by law, and do not in any manner affect the powers of constables commissioned by the Governor.

Article 3. Machine Guns, Sawed-Off Shotguns and Rifles

§ 16-23-210. Definitions. When used in this article:

(a) "**Machine gun**" applies to and includes any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than 1 shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) "**Sawed-off shotgun**" means a shotgun having a barrel or barrels of less than 18 inches in length or a weapon made from a shotgun which as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(c) "**Shotgun**" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section.

(d) "**Sawed-off rifle**" means a rifle having a barrel or barrels of less than 16 inches in length or a weapon made from a rifle which as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(e) "**Rifle**" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily

restored to fire a fixed cartridge but does not include an antique firearm as described in this section.

(f) "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(g) "Military firearm" means any military weapon, firearm, or destructive device, other than a machine gun, that is manufactured for military use by a firm licensed by the federal government pursuant to a contract with the federal government and does not include a pistol, rifle, or shotgun which fires only one shot for each pull of the trigger.

§ 16-23-220. Unlawful transportation of machine gun, military firearm, or sawed-off shotgun or rifle within State.

It is unlawful for a person to transport from one place to another in this State or for any railroad company, express company, or other common carrier or any officer, agent, or employee of any of them or other person acting in their behalf knowingly to ship or to transport from one place to another in this State a machine gun or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle, except as provided in §§ 16-23-250 and 23-31-330. A person who violates the provisions of this section, upon conviction, must be punished pursuant to § 16-23-260.

§ 16-23-230. Unlawful storing, keeping, or possessing of machine gun, military firearm, or sawed-off shotgun or rifle. It is unlawful for a person to store, keep, possess, or have in possession or permit another to store, keep, possess, or have in possession a machine gun or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle, except as provided in §§ 16-23-250 and 23-31-330.

A person who violates the provisions of this section, upon conviction, must be punished pursuant to § 16-23-260.

§ 16-23-240. Unlawful sale, rental, or giving away of machine gun, military firearm, or sawed-off shotgun or rifle; exceptions. It is unlawful for a person to sell, rent, give away, or participate in any manner, directly or indirectly, in the sale, renting, giving away, or otherwise disposing of a machine gun, or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle, except as provided in §§ 16-23-250 and 23-31-330.

A person who violates the provisions of this section, upon conviction, must be punished pursuant to § 16-23-260.

§ 16-23-250. Exceptions to application of article. The provisions of this article do not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of these organizations. Any peace officer of the State or of a county or other political subdivision, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of a state prison, correction facility, workhouse, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or persons on duty in the postal service of the United States or a common carrier while transporting direct to a police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun, or sawed-off rifle, may possess machine guns, or sawed-off shotguns, or sawed-off rifles, when required in the performance of their duties. The provisions of this section must not be construed to apply to machine guns, or sawed-off shotguns, or sawed-off rifles kept for display as relics and which are rendered harmless and not usable.

The provisions of this article do not apply to any manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U. S. C. § 921 et seq., any person authorized to possess these weapons by the United States Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, or any other federal agency empowered to grant this authorization, any common or contract carrier transporting or shipping any machine gun or military firearm to or from the manufacturer if the transportation or shipment is not prohibited by federal law, or persons licensed pursuant to § 23-31-370.

§ 16-23-260. Penalties. A person violating the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

§ 16-23-270. Article not applicable to antique firearms. The provisions of this article shall not apply to antique firearms.

§ 16-23-280. Manufacture and sale of machine guns by licensed manufacturer. Notwithstanding the provisions of this article, machine guns or military firearms manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally manufactured, transported, possessed, and sold within the State by the manufacturer thereof.

Article 5. Miscellaneous Offenses

§ 16-23-405. Definition of "weapon"; confiscation and disposition of weapons used in commission or in furtherance of crime.

(A) Except for the provisions relating to rifles and shotguns in § 16-23-460, as used in this chapter, "weapon" means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.

(B) A person convicted of a crime, in addition to a penalty, shall have a weapon used in the commission or in furtherance of the crime confiscated. Each weapon must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated weapon may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell pistols in this State for a pistol or other equipment approved by the agency, or destroy it. A weapon may not be disposed of until the results of all legal proceedings in which it may be involved are finally determined. A firearm seized by the State Law Enforcement Division may be kept by the division for use by its forensic laboratory.

§ 16-23-410. Pointing firearm at another person. It is unlawful for a person to present or point at another person a loaded or unloaded firearm.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than 5 years. This section must not be construed to abridge the right of self-defense or to apply to theatricals or like performances.

§ 16-23-415. Taking firearm or other weapon from law enforcement officer. An individual who takes a firearm, stun gun, or taser device from the person of a law enforcement officer or a corrections officer is guilty of a felony and, upon conviction, must be imprisoned for not more than 5 years, or fined not more than \$5,000, or both, if all of the following circumstances exist at the time the firearm is taken:

- (1)** the individual knows or has reason to believe the person from whom the weapon is taken is a law enforcement officer or a corrections officer;
- (2)** the law enforcement officer or corrections officer is performing his duties as a law enforcement officer or a corrections officer, or the individual's taking of the weapon is directly related to the law enforcement officer's or corrections officer's professional responsibilities;
- (3)** the individual takes the weapon without consent of the law enforcement officer or corrections officer;
- (4)** the law enforcement officer is authorized by his employer to carry the weapon in the line of duty; and
- (5)** the law enforcement officer or corrections officer is authorized by his employer to carry the weapon while off duty and has identified himself as a law enforcement officer.

§ 16-23-420. Possession of firearm on school property; concealed weapons.

(A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

(B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(D) This section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science. A married student residing in an apartment provided by the private or public school whose presence with a weapon in or around a particular building is authorized by persons legally responsible for the security of the buildings is also exempted from the provisions of this section.

(E) For purposes of this section, the terms "premises" and "property" do not include state or locally owned or maintained roads, streets, or rights-of-way of them, running through or adjacent to premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, which are open full time to public vehicular traffic.

(F) This section does not apply to a person who is authorized to carry concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon any premises, property, or building that is part of an interstate highway rest area facility.

§ 16-23-430. Carrying weapon on school property; concealed weapons.

(A) It shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, ... firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

(B) This section does not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than \$1,000 or imprisoned not more than 5 years, or both. Any weapon or object used in violation of this section may be confiscated by the law enforcement division making the arrest.

§ 16-23-440. Discharging firearms at or into dwellings, structures, enclosures, vehicles or equipment; penalties.

(A) It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not more than \$1,000 or imprisoned not more than 10 years, or both.

(B) It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into any vehicle, aircraft, watercraft, or other conveyance, device, or equipment while it is occupied. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not more than \$1,000 or imprisoned not more than 10 years, or both.

§ 16-23-450. Placing loaded trap gun, spring gun or like device. It shall be unlawful for any person to construct, set or place a loaded trap gun, spring gun or any like device in any manner in any building or in any place within this State, and any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment of not less than 30 days nor more than 1 year or by both fine and imprisonment, in the discretion of the court.

§ 16-23-460. Carrying concealed weapons; forfeiture of weapons.

(A) A person carrying a deadly weapon usually used for the infliction of personal injury concealed about his person is guilty of a misdemeanor, must forfeit to the county, or, if convicted in a municipal court, to the municipality, the concealed weapon, and must be fined not less than \$200 nor more than \$500 or imprisoned not less than 30 days nor more than 90 days.

(B) The provisions of this section do not apply to:

(1) A person carrying a concealed weapon upon his own premises or pursuant to and in compliance with Article 4, Chapter 31 of Title 23; or

(2) peace officers in the actual discharge of their duties.

(C) The provisions of this section also do not apply to rifles, shotguns, dirks, slingshots, metal knuckles, knives, or razors unless they are used with the intent to commit a crime or in furtherance of a crime.

§ 16-23-465. Additional penalty for unlawfully carrying pistol or firearm onto premises of business selling alcoholic liquor, beer or wine for on-premises consumption; exceptions.

(A) In addition to the penalties provided for by §§ 16-11-330, 16-11-620, 16-23-460, 23-31-220, and Article 1, Chapter 23, Title 16, a person convicted of carrying a firearm into a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor, and, upon conviction, must be fined not more than \$2,000 or imprisoned not more than 2 years, or both.

In addition to the penalties described above, a person who violates this section while carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23 must have his concealed weapon permit revoked for a period of 5 years.

(B) (1) This section does not apply to a person carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23; however, the person shall not consume alcoholic liquor, beer, or wine while carrying the concealable weapon on the business' premises. A person who violates this item may be charged with a violation of subsection (A).

(2) A property owner, holder of a lease interest, or operator of a business may prohibit the carrying of concealable weapons into the business by posting a "NO CONCEALABLE WEAPONS ALLOWED" sign in compliance with § 23-31-235. A person who carries a concealable weapon into a business with a sign posted in compliance with § 23-31-235 may be charged with a violation of subsection (A).

(3) A property owner, holder of a lease interest, or operator of a business may request that a person carrying a concealable weapon leave the business' premises, or any portion of the premises, or request that a person carrying a concealable weapon remove the concealable weapon from the business' premises, or any portion of the premises. A person carrying a concealable weapon who refuses to leave a business' premises or portion of the premises when requested or refuses to remove the concealable weapon from a business' premises or portion of the premises when requested may be charged with a violation of subsection (A).

§ 16-23-470. Illegal possession of tear-gas gun or ammunition.

(A) It is unlawful for anyone except an authorized law enforcement officer to possess, use, transport, sell, or buy a tear-gas machine or gun, or its parts, or any ammunition, shells, or equipment that may be used in a tear-gas gun or machine. It is lawful for a person for self-defense purposes only to possess, use, transport, sell, or buy a tear-gas machine or gun, or its parts, or ammunition, shells, or equipment for a tear-gas machine or gun, but the capacity of a tear-gas cartridge, shell, or container shall not exceed 50 cubic centimeters nor shall a tear-gas machine or gun have the capability of shooting a cartridge, shell, or container of more than 50 cubic centimeters.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than 3 years or fined not more than \$5,000, or both.

(C) Except as permitted above, nothing in this section prohibits the purchase, sale, transportation, or use of tear gas for the destruction of insects or rodents if tear gas is not in containers or shells suitable for use in a tear-gas gun, equipment, or machine and if the purchaser has written authority for the purchase and use of tear gas from the county agent of the county in which he resides.

§ 16-23-480. Manufacture or possession of article designed to cause damage by fire or other means. It is unlawful for a person to manufacture, cause to be manufactured, or possess any object or article which is designed to cause damage by fire or any other means to person or property either by ignition, detonation, or other means. It is unlawful for a person to possess any object or article solely for the purpose of causing damage by fire or other means to person or property either by ignition, detonation, or other means.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than 5 years, or both.

§ 16-23-490. Additional punishment for possession of firearm or knife during commission of, or attempt to commit, violent crime.

(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in § 16-1-60, he must be imprisoned 5 years, in addition to the punishment provided for the principal crime. This 5-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(B) Service of the 5-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory 5-year sentence to run consecutively or concurrently.

(C) Except as provided in this subsection, the person sentenced under this section is not eligible during this 5-year period for parole, work release, or extended work release. The 5 years may not be suspended and the person may not complete his term of imprisonment in less than 5 years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (§ 16-3-50), kidnapping (§ 16-3-910), carjacking (§ 16-3-1075), burglary in the second degree (§ 16-11-312(B)), armed robbery (§ 16-11-330(A)), or attempted armed robbery (§ 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in § 16-1-60, and the person is within 3 years of release from imprisonment.

(D) As used in this section, "firearm" means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, or is designed to, or may readily be converted to expel a projectile; "knife" means an instrument or tool consisting of a sharp cutting blade whether or not fastened to a handle which is capable of being used to inflict a cut, slash, or wound.

(E) The additional punishment may not be imposed unless the indictment alleged as a separate count that the person was in possession of a firearm or visibly displayed what appeared to be a firearm or visibly displays a knife during the commission of the violent crime and conviction was had upon this count in the indictment. The penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in § 16-1-60.

§ 16-23-500. Unlawful possession of a firearm by a person convicted of violent offense; confiscation.

(A) It is unlawful for a person who has been convicted of a violent crime, as defined by § 16-1-60, that is classified as a felony offense, to possess a firearm or ammunition within this State.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than \$2,000 or imprisoned not more than 5 years, or both.

(C) (1) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the firearm or ammunition, the division may keep the firearm or ammunition for use by its forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies under the provisions of this section.

(2) A law enforcement agency that receives a firearm or ammunition pursuant to this section shall administratively release the firearm or ammunition to an innocent owner. The firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally determined. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this section which resulted in the confiscation of the firearm or ammunition. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this section.

(D) The judge that hears the case involving the violent offense, as defined by § 16-1-60, that is classified as a felony offense, shall make a specific finding on the record that the offense is a violent offense, as defined by § 16-1-60, and is classified as a felony offense. A judge's failure to make a specific finding on the record does not bar or otherwise affect prosecution pursuant to this subsection and does not constitute a defense to prosecution pursuant to this subsection.

§ 16-23-520. Use, transportation, manufacture, possession, purchase, or sale of teflon-coated ammunition. It is unlawful for a person to use, transport, manufacture, possess, distribute, sell, or buy any ammunition or shells that are

coated with polytetrafluoroethylene (teflon).

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than 5 years or fined not more than \$5,000, or both.

§ 16-23-530. Firearms; possession by or sale to unlawful alien; penalties.

(A) It is unlawful for an alien unlawfully present in the United States to possess, purchase, offer to purchase, sell, lease, rent, barter, exchange, or transport into this State a firearm.

(B) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State a firearm to a person knowing that such person is not lawfully present in the United States.

(C) A person violating the provisions of subsection (A) of this section is guilty of a felony and, upon conviction, must be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

(D) A person violating the provisions of subsection (B) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than \$2,000 or imprisoned not more than 3 years, or both.

Article 7. Bombs, Destructive Devices, and Weapons of Mass Destruction

§ 16-23-710. Definitions. For purposes of this article:

(2) "**Bomb**" includes a destructive device capable of being detonated, triggered, or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property.

(4) "**Building**" means any structure, vehicle, watercraft, or aircraft:

(a) where any person lodges or lives; or

(b) where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of 2 or more units separately occupied or secured, each unit is considered both a separate building in itself and a part of the main building.

(5) "**Device**" means an object, contrivance, instrument, technique, or any thing that is designed, manufactured, assembled, or capable of serving any purpose in a bomb, destructive device, explosive, incendiary, or weapon of mass destruction.

(6) "**Detonate**" means to explode or cause to explode.

(7) "**Destructive device**" means:

(a) a bomb, incendiary device, or any thing that can detonate, explode, be released, or burn by mechanical, chemical, or nuclear means, or that contains an explosive, incendiary, poisonous gas, or toxic substance (chemical, biological, or nuclear materials) including, but not limited to, an incendiary or over-pressure device, or any other device capable of causing damage, injury, or death;

(c) a combination of any parts, components, chemical compounds, or other substances, either designed or intended for use in converting any device into a destructive device which has been or can be assembled to cause damage, injury, or death.

(8) "**Detonator**" means a device containing a detonating charge used to initiate detonation in an explosive or any device capable of triggering or setting off an explosion or explosive charge including, but not limited to, impact or an impact device, a timing mechanism, electricity, a primer, primer or detonating cord, a detonating cap or device of any kind, detonating waves, electric blasting caps, blasting caps for use with safety fuses, shock tube initiator, and detonating cord delay connectors, or any other device capable of detonating or exploding a bomb, weapon of mass destruction, or destructive device.

(9) "**Distribute**" means the actual or constructive delivery or the attempted transfer from one person to another.

(10) "**Explosive**" means a chemical compound or other substance or a mechanical system intended for the purpose of producing an explosion capable of causing injury, death, or damage to property or an explosive containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury, death, or damage to property. Explosives include, but are not limited to, the list of explosive materials published and periodically updated by the Bureau of Alcohol, Tobacco and Firearms.

(11) "**Hoax device**" or "**replica**" means a device or object which has the appearance of a destructive device.

(13) "**Incendiary device**" means a destructive device, however possessed or delivered, and by whatever name called, containing or holding a flammable liquid or compound, which is capable of being ignited by any means possible. Incendiary device includes, but is not limited to, any form of explosive, explosive bomb, grenade, missile, or similar device, whether capable of being carried or thrown by a person acting alone or with one or more persons, but does not include a device manufactured or produced for the primary purpose of illumination or for marking detours, obstructions, defective paving, or other hazards on streets, roads, highways, or bridges, when used in a lawful manner.

(14) "**Over-pressure device**" means a container filled with an explosive gas or expanding gas or liquid which is designed or constructed so as to cause the container to break, fracture, or rupture in a manner capable of causing death, injury, or property damage, and includes, but is not limited to, a chemical reaction bomb, an acid bomb, a caustic bomb, or a dry ice bomb.

(15) "Parts" mean a combination of parts, components, chemical compounds, or other substances, designed or intended for use in converting any device into a destructive device.

(17) "Property" means real or personal property of any kind including money, choses in action, and other similar interest in property.

(18) "Terrorism" includes activities that:

(a) involve acts dangerous to human life that are a violation of the criminal laws of this State;

(b) appear to be intended to:

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(c) occur primarily within the territorial jurisdiction of this State.

(19) "Weapon of mass destruction" means :

(a) any destructive device as defined in item (7);

§ 16-23-715. Possession, threatened or attempted use of weapon of mass destruction for act of terrorism;

penalty. A person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction:

(1) in cases resulting in the death of another person, must be punished by death or by imprisonment for life; or

(2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than 25 years nor more than life.

§ 16-23-720. Use, counseling or soliciting others to use, possessing, or threatening to use destructive device; harboring terrorist.

(A) It is unlawful for a person intentionally to use a destructive device or cause an explosion, or intentionally to aid, counsel, solicit another, or procure the use of a destructive device. A person who violates this subsection is guilty of a felony and, upon conviction:

(1) in cases resulting in the death of another person where there was malice aforethought, must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for 30 years;

(2) in cases resulting in the death of another person where there was not malice aforethought, must be imprisoned not less than 10 years nor more than 30 years; and

(3) in cases resulting in injury to a person, must be imprisoned for not less than 10 years nor more than 25 years.

(B) A person who intentionally causes an explosion by means of a destructive device or aids, counsels, solicits another, or procures an explosion by means of a destructive device, which results in damage to a building or other real or personal property, or a person who attempts to injure another or damage or destroy a building or other real or personal property by means of a destructive device, is guilty of a felony and, upon conviction, must be imprisoned for not less than 10 years nor more than 25 years.

(C) A person who knowingly possesses, manufactures, transports, distributes, or possesses with the intent to distribute a destructive device or any explosive, incendiary device, or over-pressure device or toxic substance or material which has been configured to cause damage, injury, or death, or a person who possesses parts, components, or materials which when assembled constitute a destructive device is guilty of a felony and, upon conviction, must be imprisoned for not less than 2 years nor more than 15 years.

(D) A person who threatens, solicits another to threaten, or conspires to threaten to cause damage, injury, or death or to cause damage to or destroy a building or other real or personal property by means of destructive device is guilty of a felony and, upon conviction, must be imprisoned for not more than 15 years.

(E) A person who knowingly protects, harbors, or conceals another who is known by the person to have planned, executed, or committed any violation of the provisions of this article is guilty of a felony and, upon conviction, must be imprisoned for not more than 15 years.

§ 16-23-730. Hoax device or replica of destructive device or detonator; manufacture, possession or transport;

threat to use; penalties. A person who knowingly manufactures, possesses, transports, distributes, uses or aids, or counsels, solicits another, or conspires with another in the use of a hoax device or replica of a destructive device or detonator which causes any person reasonably to believe that the hoax device or replica is a destructive device or detonator is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than 1 year or fined not more than \$10,000, or both. A person who communicates or transmits to another person that a hoax device or replica is a destructive device or detonator with the intent to intimidate or threaten injury, to obtain property of another, or to interfere with the ability of another person to conduct or carry on his life, business, trade, education, religious worship, or to interfere with the operations and functions of any government entity is guilty of a felony and, upon conviction, must be imprisoned for not less than 2 years nor more than 15 years.

§ 16-23-750. Conveying false information regarding attempted use of a destructive device; aiding or conspiring;

penalty. A person who conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made to kill, injure, or intimidate any person or to damage or destroy any building or other real or personal property by means of an explosive, incendiary, or destructive device or who aids, employs, or conspires with any person to do or cause to be done any of the acts in this section, is guilty of a

felony and, upon conviction, for a first offense must be imprisoned for not less than 1 year nor more than 10 years. For a second or subsequent offense, the person must be imprisoned for not less than 5 years nor more than 15 years. A sentence imposed for a violation of this section must not be suspended and probation must not be granted.

Chapter 25. Criminal Domestic Violence

Article 1. General Provisions

§ 16-25-30. Firearms and ammunition prohibitions; penalties.

(A) Notwithstanding the provisions of § 16-23-30, it is unlawful for a person to ship, transport, receive, or possess a firearm or ammunition, if the person:

(1) has been convicted of a violation of § 16-25-20(B) or 16-25-65, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in § 16-25-20(B) or § 16-25-65;

(2) has been convicted of a violation of § 16-25-20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in § 16-25-20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member;

(3) has been convicted of a violation of § 16-25-20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in § 16-25-20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition;

(4) is subject to a valid order of protection issued by the family court pursuant to Chapter 4, Title 20, and the family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person's own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20; or

(5) is subject to a valid order of protection related to domestic or family violence issued by a court of another state, tribe, or territory in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, and the judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person's own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20.

(B) A person who violates subsection (A)(1) is guilty of a felony and, upon conviction, must be fined not more than \$2,000 or imprisoned for not more than 5 years, or both. A person who violates subsection (A)(2) or (A)(3) is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000 or imprisoned not more than 3 years, or both. A person who violates subsection (A)(4) or (A)(5) is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 or imprisoned not more than 30 days, or both.

(C) A person must not be considered to have been convicted of domestic violence for purposes of this section unless the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and in the case of a prosecution for an offense described in this section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise. A person must not be considered to have been convicted of domestic violence for purposes of this section if the conviction has been expunged, set aside, or is an offense for which the person has been pardoned.

(D) At the time a person is convicted of violating the provisions of § 16-25-20 or 16-25-65, or upon the issuance of an order of protection pursuant to Chapter 4, Title 20, the court must deliver to the person a written form that conspicuously bears the following language: "Pursuant to 18 U.S.C. § 922, it is unlawful for a person convicted of a violation of § 16-25-20 or 16-25-65, or a person who is subject to a valid order of protection pursuant to Chapter 4, Title 20, to ship, transport, possess, or receive a firearm or ammunition."

(E) The provisions of this section prohibiting the possession of firearms and ammunition by persons who have been convicted of domestic violence shall apply to a person who has been convicted of domestic violence for:

(1) life, if the person has been convicted of a violation of § 16-25-65, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in § 16-25-65;

(2) ten years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later, if the person has been convicted of a violation of § 16-25-20(B), or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in § 16-25-20(B);

(3) three years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later, if the person has been convicted of a violation of § 16-25-20(C) or (D) and the judge at the time of

sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in § 16-25-20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition; or

(4) the duration of the order of protection, if the person is subject to a valid order of protection issued by the family court pursuant to Chapter 4, Title 20, and the family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person's own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or is subject to a valid order of protection related to domestic or family violence issued by a court of another state, tribe, or territory in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act and the judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person's own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition.

(F) (1) Following the period of time established in subsection (E), if the person has not been convicted of any other domestic violence offenses pursuant to this article or similar offenses in another jurisdiction, no domestic violence charges are currently pending against the person, and the person is not otherwise prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition pursuant to any other State law, the person's right to ship, transport, receive, or possess a firearm or ammunition shall be restored.

(2) Following the period of time established in subsection (E), if the person requests in writing to the South Carolina Law Enforcement Division (SLED), SLED shall notify the National Instant Criminal Background Check System (NICS) that the State has restored the person's right to ship, transport, receive, or possess a firearm or ammunition, and shall request immediate removal of the person's name to whom the restrictions contained in this section apply.

TITLE 23. Law Enforcement and Public Safety

Chapter 31. Firearms

Article 1. Purchase of Rifles and Shotguns

§ 23-31-10. Purchase of rifle or shotgun in another state. A resident of this State including a corporation or other business entity maintaining a place of business in this State, who may lawfully purchase and receive delivery of a rifle or shotgun in this State, may purchase a rifle or shotgun in another state and transport or receive it in this State; provided, that the sale meets the lawful requirements of each state, meets all lawful requirements of any federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer, or licensed collector.

§ 23-31-20. Purchase of rifle or shotgun in this State by resident of any state. A resident of any state may purchase rifles and shotguns in this State if the resident conforms to applicable provisions of statutes and regulations of this State, the United States, and of the state in which the person resides.

Article 4. Concealed Weapon Permits

§ 23-31-210. Definitions. As used in this article:

(1) "**Resident**" means an individual who is present in South Carolina with the intention of making a permanent home in South Carolina or military personnel on permanent change of station orders.

(2) "**Qualified nonresident**" means an individual who owns real property in South Carolina, but who resides in another state.

(3) "**Picture identification**" means:

(a) a valid driver's license or photographic identification card issued by the state in which the applicant resides; or

(b) an official photographic identification card issued by the Department of Revenue, a federal or state law enforcement agency, an agency of the United States Department of Defense, or the United States Department of State.

(4) "**Proof of training**" means an original document or certified copy of the document supplied by an applicant that certifies that he is either:

(a) a person who, within 3 years before filing an application, successfully has completed a basic or advanced handgun education course offered by a state, county, or municipal law enforcement agency or a nationally recognized organization that promotes gun safety. This education course must include, but is not limited to:

(i) information on the statutory and case law of this State relating to handguns and to the use of deadly force;

(ii) information on handgun use and safety;

(iii) information on the proper storage practice for handguns with an emphasis on storage practices that reduces the possibility of accidental injury to a child; and

(iv) the actual firing of the handgun in the presence of the instructor;

(b) a person who demonstrates any of the following must comply with the provisions of subitem (a)(i) only:

(i) a person who demonstrates the completion of basic military training provided by any branch of the United States military who produces proof of his military service through the submission of a DD214 form;

(ii) a retired law enforcement officer who produces proof that he is a graduate of the Criminal Justice Academy or that he was a law enforcement officer prior to the requirement for graduation from the Criminal Justice Academy; or

(iii) a retired state or federal law enforcement officer who produces proof of graduation from a federal or state academy that includes firearms training as a graduation requirement;

(c) an instructor certified by the National Rifle Association or another SLED-approved competent national organization that promotes the safe use of handguns;

(d) a person who can demonstrate to the Director of SLED or his designee that he has a proficiency in both the use of handguns and state laws pertaining to handguns;

(e) an active duty police handgun instructor;

(f) a person who has a SLED-certified or approved competitive handgun shooting classification; or

(g) a member of the active or reserve military, or a member of the National Guard.

SLED shall promulgate regulations containing general guidelines for courses and qualifications for instructors which would satisfy the requirements of this item. For purposes of subitems (a) and (c), "proof of training" is not satisfied unless the organization and its instructors meet or exceed the guidelines and qualifications contained in the regulations promulgated by SLED pursuant to this item.

(5) "**Concealable weapon**" means a firearm having a length of less than 12 inches measured along its greatest dimension that must be carried in a manner that is hidden from public view in normal wear of clothing except when needed for self-defense, defense of others, and the protection of real or personal property.

(6) "**Proof of ownership of real property**" means a certified current document from the county assessor of the county in which the property is located verifying ownership of the real property. SLED must determine the appropriate document that fulfills this requirement.

§ 23-31-215. Issuance of permits.

(A) Notwithstanding any other provision of law, except subject to subsection (B), SLED must issue a permit, which is no larger than 3-1/2 inches by 3 inches in size, to carry a concealable weapon to a resident or qualified nonresident who is at least 21 years of age and who is not prohibited by state law from possessing the weapon upon submission of:

(1) a completed application signed by the person;

(2) a photocopy of a driver's license or photographic identification card;

(3) proof of residence or if the person is a qualified nonresident, proof of ownership of real property in this State;

(4) proof of actual or corrected vision rated at 20/40 within 6 months of the date of application or, in the case of a person licensed to operate a motor vehicle in this State, presentation of a valid driver's license;

(5) proof of training;

(6) payment of a \$50 application fee. This fee must be waived for disabled veterans and retired law enforcement officers; and

(7) a complete set of fingerprints unless, because of a medical condition verified in writing by a licensed medical doctor, a complete set of fingerprints is impossible to submit. In lieu of the submission of fingerprints, the applicant must submit the written statement from a licensed medical doctor specifying the reason or reasons why the applicant's fingerprints may not be taken. If all other qualifications are met, the Chief of SLED may waive the fingerprint requirements of this item. The statement of medical limitation must be attached to the copy of the application retained by SLED. A law enforcement agency may charge a fee not to exceed \$5 for fingerprinting an applicant.

(B) Upon submission of the items required by subsection (A), SLED must conduct or facilitate a local, state, and federal fingerprint review of the applicant. SLED also must conduct a background check of the applicant through notification to and input from the sheriff of the county where the applicant resides or if the applicant is a qualified nonresident, where the applicant owns real property in this State. The sheriff within 10 working days after notification by SLED, may submit a recommendation on an application. Before making a determination whether or not to issue a permit under this article, SLED must consider the recommendation provided pursuant to this subsection. If the fingerprint review and background check are favorable, SLED must issue the permit.

(C) SLED shall issue a written statement to an unqualified applicant specifying its reasons for denying the application within 90 days from the date the application was received; otherwise, SLED shall issue a concealable weapon permit. If an applicant is unable to comply with the provisions of § 23-31-210(4), SLED shall offer the applicant a handgun training course that satisfies the requirements of § 23-31-210(4). The course shall cost \$50. If a permit is granted by operation of law because an applicant was not notified of a denial within the 90-day notification period, the permit may be revoked upon written notification from SLED that sufficient grounds exist for revocation or initial denial.

(D) Denial of an application may be appealed. The appeal must be in writing and state the basis for the appeal. The appeal must be submitted to the Chief of SLED within 30 days from the date the denial notice is received. The chief shall issue a written decision within 10 days from the date the appeal is received. An adverse decision shall specify the reasons for upholding the denial and may be reviewed by the Administrative Law Court pursuant to Article 5, Chapter 23, Title 1, upon a petition filed by an applicant within 30 days from the date of delivery of the division's decision.

(E) SLED must make permit application forms available to the public. A permit application form shall require an applicant to supply:

(1) name, including maiden name if applicable;

(2) date and place of birth;

(3) sex;

- (4) race;
- (5) height;
- (6) weight;
- (7) eye and hair color;
- (8) current residence address; and
- (9) all residence addresses for the 3 years preceding the application date.

(F) The permit application form shall require the applicant to certify that:

- (1) he is not a person prohibited under state law from possessing a weapon;
- (2) he understands the permit is revoked and must be surrendered immediately to SLED if the permit holder becomes a person prohibited under state law from possessing a weapon; and
- (3) all information contained in his application is true and correct to the best of his knowledge.

(G) Medical personnel, law enforcement agencies, organizations offering handgun education courses pursuant to § 23-31-210(4), and their personnel, who in good faith provide information regarding a person's application, must be exempt from liability that may arise from issuance of a permit; provided, however, a weapons instructor must meet the requirements established in § 23-31-210(4) in order to be exempt from liability under this subsection.

(H) A permit application must be submitted in person, by mail, or online to SLED headquarters which shall verify the legibility and accuracy of the required documents. If an applicant submits his application online, SLED may continue to make all contact with that applicant through online communications.

(I) SLED must maintain a list of all permit holders and the current status of each permit. SLED may release the list of permit holders or verify an individual's permit status only if the request is made by a law enforcement agency to aid in an official investigation, or if the list is required to be released pursuant to a subpoena or court order. SLED may charge a fee not to exceed its costs in releasing the information under this subsection. Except as otherwise provided in this subsection, a person in possession of a list of permit holders obtained from SLED must destroy the list.

(J) A permit is valid statewide unless revoked because the person has:

- (1) become a person prohibited under state law from possessing a weapon;
- (2) moved his permanent residence to another state and no longer owns real property in this State;
- (3) voluntarily surrendered the permit; or
- (4) been charged with an offense that, upon conviction, would prohibit the person from possessing a firearm. However, if the person subsequently is found not guilty of the offense, then his permit must be reinstated at no charge.

Once a permit is revoked, it must be surrendered to a sheriff, police department, a SLED agent, or by certified mail to the Chief of SLED. A person who fails to surrender his permit in accordance with this subsection is guilty of a misdemeanor and, upon conviction, must be fined \$25.

(K) A permit holder must have his permit identification card in his possession whenever he carries a concealable weapon. When carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23, a permit holder must inform a law enforcement officer of the fact that he is a permit holder and present the permit identification card when an officer:

- (1) identifies himself as a law enforcement officer; and
- (2) requests identification or a driver's license from a permit holder.

A permit holder immediately must report the loss or theft of a permit identification card to SLED headquarters. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined \$25.

(L) SLED shall issue a replacement for lost, stolen, damaged, or destroyed permit identification cards after the permit holder has updated all information required in the original application and the payment of a \$5 replacement fee. Any change of permanent address must be communicated in writing to SLED within 10 days of the change accompanied by the payment of a fee of \$5 to defray the cost of issuance of a new permit. SLED shall then issue a new permit with the new address. A permit holder's failure to notify SLED in accordance with this subsection constitutes a misdemeanor punishable by a \$25 fine. The original permit shall remain in force until receipt of the corrected permit identification card by the permit holder, at which time the original permit must be returned to SLED.

(M) A permit issued pursuant to this section does not authorize a permit holder to carry a concealable weapon into a:

- (1) law enforcement, correctional, or detention facility;
- (2) courthouse or courtroom;
- (3) polling place on election days;
- (4) office of or the business meeting of the governing body of a county, public school district, municipality, or special purpose district;
- (5) school or college athletic event not related to firearms;
- (6) daycare facility or preschool facility;
- (7) place where the carrying of firearms is prohibited by federal law;
- (8) church or other established religious sanctuary unless express permission is given by the appropriate church official or governing body;
- (9) hospital, medical clinic, doctor's office, or any other facility where medical services or procedures are performed unless expressly authorized by the employer; or

(10) place clearly marked with a sign prohibiting the carrying of a concealable weapon on the premises pursuant to §§ 23-31-220 and 23-31-235. Except that a property owner or an agent acting on his behalf, by express written consent, may allow individuals of his choosing to enter onto property regardless of any posted sign to the contrary. A person who

violates a provision of this item, whether the violation is wilful or not, only may be charged with a violation of § 16-11-620 and must not be charged with or penalized for a violation of this subsection.

Except as provided for in item (10), a person who wilfully violates a provision of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than \$1,000 or imprisoned not more than 1 year, or both, at the discretion of the court and have his permit revoked for 5 years.

Nothing contained in this subsection may be construed to alter or affect the provisions of §§ 10-11-320, 16-23-420, 16-23-430, 16-23-465, 44-23-1080, 44-52-165, 50-9-830, and 51-3-145.

(N)(1) Valid out-of-state permits to carry concealable weapons held by a resident of a reciprocal state must be honored by this State, provided, that the reciprocal state requires an applicant to successfully pass a criminal background check and a course in firearm training and safety. A resident of a reciprocal state carrying a concealable weapon in South Carolina is subject to and must abide by the laws of South Carolina regarding concealable weapons. SLED shall maintain and publish a list of those states as the states with which South Carolina has reciprocity.

(2) Notwithstanding the reciprocity requirements of subitem (1), South Carolina shall automatically recognize concealed weapon permits issued by Georgia and North Carolina.

(3) The reciprocity provisions of this section shall not be construed to authorize the holder of any out-of-state permit or license to carry, in this State, any firearm or weapon other than a handgun.

(O) A permit issued pursuant to this article is not required for a person:

(1) specified in § 16-23-20, items (1) through (5) and items (7) through (11);

(2) carrying a self-defense device generally considered to be nonlethal including the substance commonly referred to as "pepper gas"; or

(3) carrying a concealable weapon in a manner not prohibited by law.

(P) Upon renewal, a permit issued pursuant to this article is valid for 5 years. Subject to subsection (Q), SLED shall renew a currently valid permit upon:

(1) payment of a \$50 renewal fee by the applicant. This fee must be waived for disabled veterans and retired law enforcement officers;

(2) completion of the renewal application; and

(3) picture identification or facsimile copy thereof.

(Q) Upon submission of the items required by subsection (P), SLED must conduct or facilitate a state and federal background check of the applicant. If the background check is favorable, SLED must renew the permit.

(R) No provision contained within this article shall expand, diminish, or affect the duty of care owed by and liability accruing to, as may exist at law immediately before the effective date of this article, the owner of or individual in legal possession of real property for the injury or death of an invitee, licensee, or trespasser caused by the use or misuse by a third party of a concealable weapon. Absence of a sign prohibiting concealable weapons shall not constitute negligence or establish a lack of duty of care.

(S) At least 30 days before a permit issued pursuant to this article expires, SLED shall notify the permit holder by mail or online if permitted by subsection (H) at the permit holder's address of record that the permit is set to expire along with notification of the permit holder's opportunity to renew the permit pursuant to the provisions of subsections (P) and (Q).

(T) During the first quarter of each calendar year, SLED must publish a report of the following information regarding the previous calendar year:

(1) the number of permits;

(2) the number of permits that were issued;

(3) the number of permit applications that were denied;

(4) the number of permits that were renewed;

(5) the number of permit renewals that were denied;

(6) the number of permits that were suspended or revoked; and

(7) the name, address, and county of a person whose permit was revoked, including the reason for the revocation pursuant to subsection (J)(1).

The report must include a breakdown of such information by county.

(U) A concealable weapon permit holder whose permit has been expired for no more than 1 year may not be charged with a violation of § 16-23-20 but must be fined not more than \$100.

§ 23-31-216. Collection and retention of fees. The State Law Enforcement Division shall collect, retain, expend, and carry forward all fees associated with the concealable weapon application, renewal, and replacement of the permit, as provided pursuant to this article.

§ 23-31-217. Effect on Section 16-23-20. Nothing in this article shall affect the provisions of § 16-23-20.

§ 23-31-220. Right to allow or permit concealed weapons upon premises; signs. Nothing contained in this article shall in any way be construed to limit, diminish, or otherwise infringe upon:

(1) the right of a public or private employer to prohibit a person who is licensed under this article from carrying a concealable weapon upon the premises of the business or work place or while using any machinery, vehicle, or equipment owned or operated by the business;

(2) the right of a private property owner or person in legal possession or control to allow or prohibit the carrying of a concealable weapon upon his premises.

The posting by the employer, owner, or person in legal possession or control of a sign stating "No Concealable Weapons Allowed" shall constitute notice to a person holding a permit issued pursuant to this article that the employer, owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises or into the work place. A person who brings a concealable weapon onto the premises or work place in violation of the provisions of this paragraph may be charged with a violation of § 16-11-620. In addition to the penalties provided in § 16-11-620, a person convicted of a second or subsequent violation of the provisions of this paragraph must have his permit revoked for a period of 1 year. The prohibition contained in this section does not apply to persons specified in § 16-23-20, item (1).

§ 23-31-225. Carrying concealed weapons into residences or dwellings. No person who holds a permit issued pursuant to Article 4, Chapter 31, Title 23 may carry a concealable weapon into the residence or dwelling place of another person without the express permission of the owner or person in legal control or possession, as appropriate. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not less than \$1,000 or imprisoned for not more than 1 year, or both, at the discretion of the court and have his permit revoked for 5 years.

§ 23-31-230. Carrying concealed weapons between automobile and accommodation. Notwithstanding any provision of law, any person may carry a concealable weapon from an automobile or other motorized conveyance to a room or other accommodation he has rented and upon which an accommodations tax has been paid.

§ 23-31-235. Sign requirements.

(A) Notwithstanding any other provision of this article, any requirement of or allowance for the posting of signs prohibiting the carrying of a concealable weapon upon any premises shall only be satisfied by a sign expressing the prohibition in both written language interdict and universal sign language.

(B) All signs must be posted at each entrance into a building where a concealable weapon permit holder is prohibited from carrying a concealable weapon and must be:

- (1)** clearly visible from outside the building;
- (2)** eight inches wide by twelve inches tall in size;
- (3)** contain the words "NO CONCEALABLE WEAPONS ALLOWED" in black 1-inch tall uppercase type at the bottom of the sign and centered between the lateral edges of the sign;
- (4)** contain a black silhouette of a handgun inside a circle 7 inches in diameter with a diagonal line that runs from the lower left to the upper right at a 45 degree angle from the horizontal;
- (5)** a diameter of a circle; and
- (6)** placed not less than 40 inches and not more than 60 inches from the bottom of the building's entrance door.

(C) If the premises where concealable weapons are prohibited does not have doors, then the signs contained in subsection (A) must be:

- (1)** thirty-six inches wide by 48 inches tall in size;
- (2)** contain the words "NO CONCEALABLE WEAPONS ALLOWED" in black 3-inch tall uppercase type at the bottom of the sign and centered between the lateral edges of the sign;
- (3)** contain a black silhouette of a handgun inside a circle 34 inches in diameter with a diagonal line that is 2 inches wide and runs from the lower left to the upper right at a 45 degree angle from the horizontal and must be a diameter of a circle whose circumference is 2 inches wide;
- (4)** placed not less than 40 inches and not more than 96 inches above the ground;
- (5)** posted in sufficient quantities to be clearly visible from any point of entry onto the premises.

§ 23-31-240. Persons allowed to carry concealed weapon while on duty. Notwithstanding any other provision contained in this article, the following persons who possess a valid permit pursuant to this article may carry a concealable weapon anywhere within this State, when carrying out the duties of their office:

- (1)** active Supreme Court justices;
- (2)** active judges of the court of appeals;
- (3)** active circuit court judges;
- (4)** active family court judges;
- (5)** active masters-in-equity;
- (6)** active probate court judges;
- (7)** active magistrates;
- (8)** active municipal court judges;
- (9)** active federal judges;
- (10)** active administrative law judges;
- (11)** active solicitors and assistant solicitors; and
- (12)** active workers' compensation commissioners.

Article 5. Use and Possession of Machine Guns, Sawed-Off Shotguns and Rifles

§ 23-31-310. Definitions. When used in this article:

(a) "Machine gun" applies to and includes any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than 1 shot, without manual reloading, by a single function of the trigger. The term shall also

include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) "Sawed-off shotgun" means a shotgun having a barrel or barrels of less than 18 inches in length or a weapon made from a shotgun which as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(c) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section.

(d) "Sawed-off rifle" means a rifle having a barrel or barrels of less than 16 inches in length or a weapon made from a rifle which as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(e) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed cartridge but does not include an antique firearm as described in this section.

(f) "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(g) "Military firearm" means any military weapon, firearm, or destructive device, other than a machine gun, that is manufactured for military use by a firm licensed by the federal government pursuant to a contract with the federal government and does not include a pistol, rifle, or shotgun which fires only one shot for each pull of the trigger.

§ 23-31-320. Exceptions to application of article. The provisions of this article shall not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of such organizations. Any peace officer of the State or of any county or other political subdivision thereof, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of any state prison, penitentiary, workhouse, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or person on duty in the postal service of the United States or any common carrier while transporting direct to any police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun or sawed-off rifle, may possess machine guns, or sawed-off shotguns or sawed-off rifles, when required in the performance of their duties. Nor shall the provisions hereof be construed to apply to machine guns, or sawed-off shotguns or sawed-off rifles, kept for display as relics and which are rendered harmless and not usable.

The provisions of this article shall not apply to any manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U. S. C. § 921 et seq., nor to any common or contract carrier transporting or shipping any machine guns or military firearms to or from such manufacturer if the transportation or shipment is not prohibited by federal law. Any such manufacturer shall furnish to the South Carolina Law Enforcement Division the serial numbers of all machine guns or military firearms manufactured by it within 30 days of such manufacture and shall be subject to the penalties provided in § 23-31-340 for noncompliance.

§ 23-31-330. Application and registration of person allowed to possess machine gun or sawed-off shotgun or rifle.

(A) Every person permitted by § 23-31-320 to possess a machine gun or sawed-off shotgun or sawed-off rifle, and any person elected or appointed to any office or position which entitles the person to possess a machine gun or sawed-off shotgun or sawed-off rifle, upon taking office, shall file with the State Law Enforcement Division on a blank to be supplied by the division on request an application which is properly sworn. The application must be approved by the sheriff of the county in which the applicant resides or has his principal place of business and include the applicant's name, residence and business address, physical description, whether or not ever charged or convicted of any crime, municipal, state, or otherwise, and where, if charged, and when it was disposed of. The applicant shall also give a description including the serial number and make of the machine gun or sawed-off shotgun or sawed-off rifle which he possesses or desires to possess. The State Law Enforcement Division shall file the application in its office. The division shall register the applicant together with the information required in the application in a book or index to be kept for that purpose, assign to him a number, and issue to him a card which shall bear the signature of the applicant and which he shall keep with him while he has the machine gun or sawed-off shotgun or sawed-off rifle in his possession. This registration must be made on the date application is received and filed with the division. The registration expires on December thirty-first of the year in which the license is issued.

(B) No permit or registration required by the provisions of this section is required where weapons are possessed by a governmental entity which has a significant public safety responsibility for the protection of life or property.

§ 23-31-340. Penalties. A person who violates the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

§ 23-31-350. Article not applicable to antique firearms. The provisions of this article shall not apply to antique firearms.

§ 23-31-360. Unregistered possession of machine guns or military firearms by licensed manufacturer. Machine guns or military firearms manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally possessed by the manufacturer without being registered with the State Law Enforcement Division. The manufacturing firm shall furnish to SLED the serial numbers of all machine guns or military firearms manufactured by it within 30 days of their manufacture and it is subject to the penalties provided in § 23-31-340 for noncompliance.

§ 23-31-370. Special limited license for possession, transportation, and sale of machine guns; violations and penalties.

(a) The South Carolina Law Enforcement Division may issue a special limited license for the possession, transportation, and sale of machine guns in this State to persons: (1) who are authorized representatives of a machine gun manufacturer or dealer engaged in demonstrating and selling them to agencies authorized by law to possess them, or (2) who are engaged in professional movie-making or providing services to professional movie-makers who use machine guns as regulated by this article in the course of creating movie "special effects".

(b) Applications for the special license authorized by this section must be on a form prescribed by the division, duly sworn to, containing the applicant's name, business and residence address, a record of any criminal charges filed against the applicant in the United States for other than traffic law violations and the disposition of the charges, a description of the machine guns to be possessed, transported, or sold in this State, including their make and serial numbers, the sites within the State to which the machine guns will be transported, and such other information the division considers necessary to implement this section.

(c) The division may issue a special license pursuant to this section if it determines that the applicant has not been convicted of any offense other than traffic violations and the applicant clearly qualifies under item (1) or (2) of subsection (a). The special license is valid for a specified period not to exceed 6 months which must be stated on the license.

(d) Any person who knowingly and wilfully makes any false statement for the purpose of obtaining the special license or who violates its terms, in addition to any other penalty provided by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than \$5,000 or imprisoned for not more than 2 years, or both.

Article 6. Using a Firearm While Under the Influence of Alcohol or a Controlled Substance

§ 23-31-400. Definitions; unlawful use of firearm; violations.

(A) As used in this article:

(1) "Use a firearm" means to discharge a firearm.

(2) "Serious bodily injury" means a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(B) It is unlawful for a person who is under the influence of alcohol or a controlled substance to use a firearm in this State.

(C) A person who violates the provisions of subsection (B) is guilty of a misdemeanor and, upon conviction, must be fined not less than \$2,000 or imprisoned not more than 2 years.

(D) This article does not apply to persons lawfully defending themselves or their property.

Article 7. Local Regulations

§ 23-31-510. Regulation of ownership, transfer, or possession of firearm or ammunition; discharge on landowner's own property. No governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:

(1) the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things; or

(2) a landowner discharging a firearm on the landowner's property to protect the landowner's family, employees, the general public, or the landowner's property from animals that the landowner reasonably believes pose a direct threat or danger to the landowner's property, people on the landowner's property, or the general public. For purposes of this item, the landowner's property must be a parcel of land comprised of at least 25 contiguous acres. Any ordinance regulating the discharge of firearms that does not specifically provide for an exclusion pursuant to this item is unenforceable as it pertains to an incident described in this item; otherwise, the ordinance is enforceable.

§ 23-31-520. Power to regulate public use of firearms; confiscation of firearms or ammunition. This article does not affect the authority of any county, municipality, or political subdivision to regulate the careless or negligent discharge or public brandishment of firearms, nor does it prevent the regulation of public brandishment of firearms during the times of or a demonstrated potential for insurrection, invasions, riots, or natural disasters. This article denies any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest.

Article 8. Identification Cards Issued to and Firearm Qualification Provided for Retired Law Enforcement Personnel

§ 23-31-600. Retired personnel; identification cards; qualification for carrying concealed weapon.

(A) For purposes of this section:

(1) "Identification card" is a photographic identification card complying with 18 U.S.C. § 926C.

(2) "Qualified retired law enforcement officer" shall have the same meaning as in 18 U.S.C. § 926C.

(B) An agency or department within this State may comply with 18 U.S.C. § 926C, by issuing an identification card to any qualified retired law enforcement officer. If the agency or department currently issues credentials to active law enforcement officers, the agency or department may comply with the requirements of this section by issuing the same credentials to qualified retired law enforcement officers. If the same credentials are issued, then the agency or department must stamp the credentials with the word "RETIRED".

(C) (1) Subject to the limitations of subsection (E), a qualified retired law enforcement officer may carry a concealed weapon in this State if the qualified retired law enforcement officer possesses an identification card along with a certification that the qualified retired law enforcement officer has, not less recently than 1 year before the date the individual is carrying the firearm, met the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(2) The firearms certification required by this subsection may be reflected on the identification card or may be in a separate document carried with the identification card.

(D) The restrictions contained in §§ 23-31-220 and 23-31-225 are applicable to a person carrying a concealed weapon pursuant to this section.

(E) The agency or department must provide the qualified retired law enforcement officer with the opportunity to qualify to carry a firearm under the same standards for training and qualification for active law enforcement officers to carry firearms. However, the agency or department, as provided in 18 U.S.C. § 926C, may require the qualified retired law enforcement officer to pay the actual expenses of the training and qualification.

Article 10. Nics: Mental Health Adjudication and Commitment Reporting

Article 10. Nics: Mental Health Adjudication and Commitment Reporting Notes

Editor's Note: 2013 Act No. 22, § 3, provides as follows:

"SECTION 3. A court required to submit information to SLED pursuant to this act concerning individuals who have been adjudicated as a mental defective or who have been committed to a mental institution shall, from the effective date of this act forward, submit information by court order within 5 days from the filing of each order and in accordance with procedures developed as required by this act and have 1 year from this act's effective date to submit retroactive information by court order on such individuals going back a minimum of 10 years or, if records are not available as far back as 10 years, as far back as records exist."

§ 23-31-1010. Definitions. As used in this article:

(1) "Adjudicated as a mental defective" means a determination by a court of competent jurisdiction that a person, as a result of marked subnormal intelligence, mental illness, mental incompetency, mental condition, or mental disease:

(a) is a danger to himself or to others; or

(b) lacks the mental capacity to contract or manage the person's own affairs.

The term includes:

(a) a finding of insanity by a court in a criminal case; and

(b) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. §§ 850(a) and 876(b).

(2) "Committed to a mental institution" means a formal commitment of a person to a mental institution by a court of competent jurisdiction. The term includes a commitment to a mental institution involuntarily, and a commitment to a mental institution for mental defectiveness, mental illness, and other reasons, such as drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

(3) "Mental institution" includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

§ 23-31-1020. Collection and submission of information of persons adjudicated as a mental defective or committed to a mental institution.

(A) The Judicial Department and the Chief of SLED, or the chief's designee, shall work in conjunction with a court of competent jurisdiction in developing procedures for the collection and submission of information of persons who have been adjudicated as a mental defective or who have been committed to a mental institution.

(B) When a court submits this information to SLED by court order, SLED shall transmit the information to the National Instant Criminal Background Check System (NICS) established pursuant to the Brady Handgun Violence Protection Act of 1993, Pub. L. (pg.79) 103-159.

(C) The court shall submit the information to SLED by court order within 5 days from the filing of each order related to adjudications and commitments. Under no circumstances may the court or SLED submit information pursuant to this

section relating to a person's diagnosis or treatment.

(D) SLED shall keep information submitted by the court confidential, and that information only may be disclosed to NICS pursuant to this section, for purposes directly related to the Brady Act, or as provided in subsection (E).

(E) If the court, by court order, has submitted a person's name and other identifying information to SLED to be transmitted to NICS, SLED shall review the state concealed weapons permit holders list, and if the review reveals that the person possesses a current concealed weapons permit, the permit must be revoked and surrendered to a sheriff, police department, SLED agent, or by certified mail to the Chief of SLED. If the permit holder fails to return the permit within 10 days of being notified of the permit's revocation, SLED shall retrieve the permit from the permit holder.

(F) Information submitted by the court pursuant to this section, which is also contained in court orders or in other state or local agency records, is not affected by this section, and such court orders or other state or local agency records may be disclosed in accordance with existing laws and procedures.

§ 23-31-1030. Petition to remove prohibition from shipping, transporting, possessing, or receiving a firearm or ammunition.

(A) If a person is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) or § 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution, the person may petition the court that issued the original order to remove the prohibitions. The person may file the petition upon the expiration of any current commitment order; however, the court only may consider petitions for relief due to adjudications and commitments that occurred in this State.

(B) The petition must be accompanied by an authorization and release signed by the petitioner authorizing disclosure of the petitioner's current and past medical records, including mental health records.

(C) If the petition is filed pro se, the court shall provide notice to all parties of record. If the petitioner is represented by counsel, counsel shall provide notice to all parties of record.

(D) Notwithstanding the exclusive jurisdiction of the court to preside over hearings initiated pursuant to this section, the case may be removed to the circuit court upon motion of the petitioner or on motion of the court, made not later than 10 days following the date the petition is filed. Upon such motion, the case must be removed to the circuit court where the court shall proceed with the case de novo.

(E)(1) Within 90 days of receiving the petition, unless the court grants an extension upon request of the petitioner, the court shall conduct a hearing which must be presided over by a person other than the person who gathered evidence for use by the court in the hearing.

(2) At the hearing on the petition, the petitioner shall have the opportunity to submit evidence, and a record of the hearing must be made and maintained for review. The court shall consider information and records, which otherwise are confidential or privileged, relevant to the criteria for removing firearm and ammunition prohibitions and shall receive and consider evidence concerning the following:

(a) the circumstances regarding the firearm and ammunitions prohibitions imposed by 18 U.S.C. § 922(g)(4) and § 23-31-1040;

(b) the petitioner's record, which must include, at a minimum, the petitioner's mental health and criminal history records;

(c) evidence of the petitioner's reputation developed through character witness statements, testimony, or other character evidence; and

(d) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental defectiveness or mental illness the petitioner poses a threat to the safety of the public or himself or herself.

(F) The hearing must be closed to the public, and the petitioner's mental health records must be restricted from public disclosure. However, upon motion by the petitioner, the hearing may be open to the public, and the court may allow for the in camera inspection of the petitioner's mental health records and for the use of these records, but these records must be restricted from public disclosure.

(G)(1) The court shall make findings of fact regarding the following and shall remove the firearm and ammunition prohibitions if the petitioner proves by a preponderance of the evidence that:

(a) the petitioner is no longer required to participate in court-ordered psychiatric treatment;

(b) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to be not likely to act in a manner dangerous to public safety; and

(c) granting the petitioner relief will not be contrary to the public interest.

(2) Notwithstanding item (1), the court must not remove the firearm and ammunition prohibitions if, by a preponderance of the evidence, it is proven that the petitioner has engaged in acts of violence subsequent to the petitioner's last adjudication as a mental defective or last commitment to a mental institution, unless the petitioner, by clear and convincing evidence, proves that he is not likely to act in a manner dangerous to public safety.

(H) If the petitioner is denied relief and the firearm and ammunition prohibitions are not removed, the petitioner may appeal to the circuit court for de novo review. In conducting its review, the circuit court:

(1) shall review the record;

(2) may give deference to the decision of the court denying the petitioner relief; and

(3) may receive additional evidence as necessary to conduct an adequate review.

(I) Medical records, psychological reports, and other treatment records which have been submitted to the court or

admitted into evidence under this section must be part of the record, but must be sealed and opened only on order of the court.

(J) If a court issues an order pursuant to this section that removes the firearm and ammunition prohibitions that prohibited the petitioner from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) or § 23-31-1040, arising from adjudication as a mental defective or commitment to a mental institution, the court shall provide SLED with a certified copy of the order that may be transmitted through electronic means. SLED promptly shall inform the NICS of the court action removing these firearm and ammunition prohibitions.

§ 23-31-1040. Unlawful for a person adjudicated as a mental defective or committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition; penalty; confiscation.

(A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a felony, and, upon conviction, must be fined not more than \$2,000 or imprisoned not more than 5 years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED's forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section. A law enforcement agency that receives a firearm or ammunition pursuant to this subsection may administratively release the firearm or ammunition to an innocent owner. If possession of the firearm or ammunition is necessary for legal proceedings, the firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally concluded. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this subsection which resulted in the firearm's or ammunition's confiscation. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within 30 days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this subsection.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person's representative, as appropriate, a written form that conspicuously informs the person or the person's representative, as appropriate, of the provisions of this section.

§ 23-31-1060. Hearing on fitness to stand trial. Nothing in this article affects a court's duty to conduct a hearing on the issue of a person's fitness to stand trial pursuant to § 44-23-430. A solicitor shall not dismiss charges against a person prior to such hearing based solely on the person's fitness to stand trial.