**South Carolina General Assembly**

124th Session, 2021-2022

**S. 190**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hembree

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Currently residing in the Senate Committee on **Judiciary**

Summary: Handguns

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/9/2020 Senate Referred to Committee on **Judiciary**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 209](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\190_20201209.docx)

**A** **BILL**

TO AMEND SECTION 16‑23‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE CHAPTER REGARDING OFFENSES INVOLVING WEAPONS, SO AS TO ADD NECESSARY TERMS; BY ADDING SECTION 16‑23‑25 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO SELL, OFFER TO SELL, DELIVER, LEASE, RENT, BARTER, EXCHANGE, OR TRANSPORT FOR SALE IN THIS STATE ANY HANDGUN TO A PERSON WHO IS UNDER THE AGE OF EIGHTEEN, TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON UNDER THE AGE OF EIGHTEEN TO POSSESS OR ATTEMPT TO POSSESS A HANDGUN WITHIN THIS STATE, AND TO PROVIDE FOR EXCEPTIONS; TO AMEND SECTION 16‑23‑30, RELATING TO THE UNLAWFUL CARRYING OF A HANDGUN, SO AS TO DELETE THE USE OF THE TERM “HANDGUN” AND REPLACE IT WITH “FIREARM” AND TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO SELL, OFFER TO SELL, DELIVER, LEASE, RENT, BARTER, EXCHANGE, TRANSPORT FOR SALE INTO THIS STATE, OR OTHERWISE DISPOSE OF ANY FIREARM TO A PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE PERSON MEETS A CERTAIN CATEGORY; TO AMEND SECTION 16‑23‑50, RELATING TO PENALTIES, DISPOSITION OF FINES, AND THE FORFEITURE AND DISPOSITIONS OF HANDGUNS, SO AS TO REDUCE THE PENALTY FOR A FIRST OFFENSE FIREARM VIOLATION, TO PROVIDE FOR ENHANCED PENALTIES FOR SUBSEQUENT VIOLATIONS, TO DELETE THE USE OF THE TERM “HANDGUN” AND REPLACE IT WITH “FIREARM”, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY THAT RECEIVES A FIREARM PURSUANT TO THIS SECTION SHALL ADMINISTRATIVELY RELEASE THE FIREARM TO AN INNOCENT OWNER UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS 16‑23‑500 AND 23‑31‑1040 RELATING TO THE UNLAWFUL POSSESSION OF A FIREARM BY A PERSON CONVICTED OF A VIOLENT OFFENSE OR ADJUDICATED AS A MENTAL DEFECTIVE, RESPECTIVELY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑23‑10 of the 1976 Code is amended to read:

“Section 16‑23‑10. 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)~~(3) ‘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~~ violent crime.

~~(5)~~(4) ‘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)~~(5) ‘Conviction’ as used herein shall include pleas of guilty, pleas of nolo contendere, and forfeiture of bail.

~~(7)~~(6) ‘Division’ means the State Law Enforcement Division.

~~(8)~~(7) ‘Purchase’ or ‘sell’ means to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn, or accept in pawn.

~~(9)~~(8) ‘Person’ means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

~~(10)~~(9) ‘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.

(10) ‘Adjudicated as a mentally 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 is a danger to himself or to others, or lacks the mental capacity to contract or manage the person’s own affairs. The term includes a finding of insanity by a court in a criminal case and those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility by a criminal court.

(11) ‘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 commitment to a mental institution involuntarily and commitment to a mental institution for mental defectiveness, mental illness, and other reasons, such as drug use.

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

(13) ‘Antique firearm’ means a firearm as defined by Section 16‑23‑210(f).

(14) ‘Firearm’ means a weapon that will, is designed to, or may readily be converted to, expel a projectile by the action of an explosive, the frame or receiver of the weapon, a firearm muffler or firearm silencer, or a destructive device, but the term does not include an antique firearm.

(15) ‘Firearm frame or receiver’ means the part of a firearm that provides housing for the hammer, bolt, or breechblock and the firing mechanism and the part that is usually threaded at its forward portion to receive the barrel.

(16) ‘Firearm muffler or firearm silencer’ means a device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in the assembly or fabrication.”

SECTION 2. Article 1, Chapter 23, Title 16 of the 1976 Code is amended by adding:

“Section 16‑23‑25. (A) It is unlawful for a person to sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale in this State any handgun to a person who is 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 instruction under the immediate supervision of a parent or adult instructor.

(B) It is unlawful for a person who is under the age of eighteen to possess or attempt to possess a handgun within this State unless the person is under the immediate supervision of a parent or an adult instructor or unless the person is on duty or training as a member of the Armed Forces of the United States, active or reserve, National Guard, State Militia, or R.O.T.C.”

SECTION 3. Section 16‑23‑30 of the 1976 Code is amended to read:

“Section 16‑23‑30. (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~~, or otherwise dispose of a firearm to a person knowing or having reasonable cause to believe that the person:

(1) ~~a person who~~ has been convicted of a ~~crime of violence~~ felony as defined in Section 16‑1‑20, or a related offense 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) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance as defined in Section 44‑53‑110;

(4) has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, having been a citizen of the United States, has renounced his citizenship;

(6) ~~a person who~~ is a member of a subversive organization;

(7) is subject to a court order that restrains the person from harassing, stalking, or threatening a household member as defined in Section 16‑25‑10, or the child of a household member, except that this paragraph shall only apply to a court order that:

(a) was issued after a hearing of which the person received actual notice, and at which the person had the opportunity to participate; and

(b) includes a finding that the person represents a credible threat to the physical safety of the household member or child; or

~~(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)~~(8) ~~a person who by~~ is subject to an order of a circuit judge ~~or county~~ or summary court judge of this State and has been ~~adjudged~~ found 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~~ except that this paragraph shall only apply to a court order that:

(a) was issued after a hearing in which the person was provided reasonable notice and had the opportunity to be heard; and

(b) includes a finding that the person represents a credible threat to the physical safety of another.

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

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

SECTION 4. Section 16‑23‑50 of the 1976 Code is amended to read:

“Section 16‑23‑50. (A)(1) A person, including a dealer, who violates the provisions of this article, except Section 16‑23‑20, is guilty ~~of a felony~~ of a misdemeanor and, upon conviction, ~~must be fined not more than two thousand dollars or imprisoned not more than five years, or both~~ for a first offense, must be fined not more than two thousand five hundred dollars or imprisoned not more than three years, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned for not less than one year or more than ten years, no part of which may be suspended nor probation granted.

(2) A person violating the provisions of Section 16‑23‑20 and Section 16‑23‑25 is guilty of a misdemeanor and, upon conviction, for a first offense must be fined not more than one thousand dollars or imprisoned not more than one year, or both. For a second offense, the offender is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than three years, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(B)(1) In addition to the penalty provided in this section, the ~~handgun~~ firearm involved in the violation of this article must be confiscated. The ~~handgun~~ firearm 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~~ firearm 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~~ firearms in this State for a ~~handgun~~ firearm or any other equipment approved by the agency, or destroy it. A ~~weapon~~ firearm must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined and the requirements of Section 17‑28‑300, et seq. have been met. If the State Law Enforcement Division seized the ~~handgun~~ firearm, the division may keep the ~~handgun~~ firearm for use by its forensic laboratory. Records must be kept of all confiscated ~~handguns~~ firearms received by the law enforcement agencies under the provisions of this article.

(2) A law enforcement agency that receives a firearm pursuant to this section shall administratively release the firearm to an innocent owner. The firearm must not be released to the innocent owner until the results of any legal proceedings in which the firearm may be involved are finally determined and the requirements of Section 17‑28‑300, et seq. have been met. Before the firearm may be released, the innocent owner shall provide the law enforcement agency with proof of ownership, shall certify that the innocent owner neither was a consenting party to nor had knowledge of the use of the firearm that made it subject to confiscation, and shall certify that the innocent owner will not release the firearm to the person who was charged with the violation of the section that resulted in the confiscation of the firearm. The law enforcement agency shall notify the innocent owner when the firearm is available for release. If the innocent owner fails to recover the firearm within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm as otherwise provided in this section.”

SECTION 5. Sections 16‑23‑500 and 23‑31‑1040 of the 1976 Code are repealed.

SECTION 6. This act takes effect upon approval by the Governor.

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