CHAPTER 31

Firearms

ARTICLE 1

Purchase of Rifles and Shotguns

**SECTION 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.

HISTORY: 1962 Code Section 66‑581; 1971 (57) 799; 2012 Act No. 285, Section 1, eff June 29, 2012.

Effect of Amendment

The 2012 amendment substituted "another" for "a contiguous" and made other, nonsubstantive, changes.

**SECTION 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.

HISTORY: 1962 Code Section 66‑582; 1971 (57) 799; 1996 Act No. 418, Section 1.

ARTICLE 3

Regulation of Pistols [Repealed]

**SECTIONS 23‑31‑110 to 23‑31‑200.** Repealed by 2012 Act No. 285, Section 2, eff June 29, 2012.

Editor's Note

Former Section 23‑31‑110 was entitled "Definitions" and was derived from 1962 Code Section 16‑129; 1965 (54) 578; 1975 (59) 582; 1976 Act No. 685, Sections 1‑3.

Former Section 23‑31‑130 was entitled "Retail dealers shall be licensed" and was derived from 1962 Code Section 16‑129.3; 1965 (54) 578.

Former Section 23‑31‑140 was entitled "Purchase of pistol; residency requirement; driver's license as proof; exceptions" and was derived from 1975 (59) 582; 1988 Act No. 492, Section 3; 1992 Act No. 305, Sections 1, 2; 1993 Act No. 181, Section 360; 1996 Act No. 459, Section 49; 2004 Act No. 242, Section 1; 2005 Act No. 169, Section 1.

Former Section 23‑31‑150 was entitled "Issuance, duration, conditions and forfeiture of retail dealer's license" and was derived from 1962 Code Section 16‑129.4; 1965 (54) 578; 1975 (59) 582; 1976 Act No. 685, Sections 5, 6; 1986 Act No. 433, Section 1; 2005 Act No. 169, Section 2.

Former Section 23‑31‑160 was entitled "Giving false information or evidence" and was derived from 1962 Code Section 16‑129.5; 1965 (54) 578; 1976 Act No. 685, Section 7.

Former Section 23‑31‑170 was entitled "Mortgage, deposit or pledge of pistol" and was derived from 1962 Code Section 16‑129.6; 1965 (54) 578.

Former Section 23‑31‑180 was entitled "Certain pistols declared to be contraband; forfeiture, seizure, and destruction; disposal restrictions; use for display" and was derived from 1962 Code Section 16‑129.6:1; 1973 (58) 733; 1975 (59) 578; 1986 Act No. 532, Section 8; 1989 Act No. 172, Section 2; 1990 Act No. 556, Section 1; 1998 Act No. 297, Section 3.

Former Section 23‑31‑190 was entitled "Penalties; disposition of fines; forfeiture and disposition of pistols" and was derived from 1962 Code Section 16‑129.7; 1965 (54) 578; 1975 (59) 582; 1993 Act No. 184, Section 198; 1996 Act No. 292, Section 5.

Former Section 23‑31‑200 was entitled "Construction" and was derived from 1962 Code Section 16‑129.8; 1974 (58) 2871.

ARTICLE 4

Concealed Weapon Permits

**SECTION 23‑31‑205.** Name.

 This article may be cited as the "Law Abiding Citizens Self‑Defense Act of 1996".

HISTORY: 1996 Act No. 464, Section 1.

**SECTION 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 three 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 twelve 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.

HISTORY: 1996 Act No. 464, Section 1; 2002 Act No. 274, Section 3; 2006 Act No. 347, Section 1, eff June 9, 2006; 2014 Act No. 123 (S.308), Section 2.A, eff February 11, 2014.

Effect of Amendment

The 2006 amendment added item (2) defining "Qualified nonresident", redesignated items (2) to (5) as items (3) to (6), and added item (7) defining "Proof of ownership of real property".

2014 Act No. 123, Section 2.A, in subsection (3)(a), substituted "license or photographic identification card" for "license, or if the applicant is a qualified nonresident, a valid driver's license"; deleted former subsection (4), definition for "proof of residence"; redesignated the remaining subsections accordingly; in subsection (4), definition of "proof of training", in paragraph (a), substituted "successfully has" for "has successfully", and deleted "be a minimum of eight hours and must" before "education course must", added paragraph (b), and deleted "who has had handgun training in the previous three years" from the end of paragraph (g).

**SECTION 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 three and one‑half inches by three inches in size, to carry a concealable weapon to a resident or qualified nonresident who is at least twenty‑one 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 six 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 fifty‑dollar 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 five dollars 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 ten 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 ninety 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 Section 23‑31‑210(4), SLED shall offer the applicant a handgun training course that satisfies the requirements of Section 23‑31‑210(4). The course shall cost fifty dollars. SLED shall use the proceeds to defray the training course's operating costs. If a permit is granted by operation of law because an applicant was not notified of a denial within the ninety‑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 thirty days from the date the denial notice is received. The chief shall issue a written decision within ten 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 thirty 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 three 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 Section 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 Section 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 twenty‑five dollars.

 (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 twenty‑five dollars.

 (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 five‑dollar replacement fee. Any change of permanent address must be communicated in writing to SLED within ten days of the change accompanied by the payment of a fee of five dollars 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 twenty‑five dollar 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 Sections 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 Section 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 one thousand dollars or imprisoned not more than one year, or both, at the discretion of the court and have his permit revoked for five years.

 Nothing contained in this subsection may be construed to alter or affect the provisions of Sections 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 item (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 Section 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 five years. Subject to subsection (Q), SLED shall renew a currently valid permit upon:

 (1) payment of a fifty‑dollar 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 thirty 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 one year may not be charged with a violation of Section 16‑23‑20 but must be fined not more than one hundred dollars.

HISTORY: 1996 Act No. 464, Section 1; 1997 Act No. 39, Section 2; 2002 Act No. 274, Section 4; 2005 Act No. 154, Section 1; 2006 Act No. 347, Section 2, eff June 9, 2006; 2008 Act No. 202, Sections 1, 2, eff April 16, 2008; 2008 Act No. 349, Section 1, eff June 16, 2008; 2014 Act No. 123 (S.308), Section 2.B, eff February 11, 2014; 2016 Act No. 223 (H.3799), Section 1, eff June 3, 2016.

Effect of Amendment

The 2006 amendment added the references to qualified non‑residents in subsection (A) in the introduction and in subparagraph (3), subsection (B), subparagraph (E)(8), subparagraph (F)(3), subparagraph (P)(3), and subsection (S).

The first 2008 amendment rewrote subsection (I) to restrict the circumstances upon which SLED can release its list of permit holders; and added subsection (T).

The second 2008 amendment rewrote subsection (N) to require that the reciprocal state require firearm training and a criminal background check.

2014 Act No. 123, Section 2.B, amended subsections (A), (B), (C), (D), (E), (F), (G), (H), (K), (M), (O), (P), (Q), (S), (T), and added subsection (U).

2016 Act No. 223, Section 1, in (N), inserted paragraph designator (1), and added (2) and (3), relating to recognizing concealed weapon permits issued by Georgia and North Carolina under certain circumstances.

**SECTION 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.

HISTORY: 1997 Act No. 39, Section 1; 1999 Act No. 100, Part II, Section 18; 2008 Act No. 353, Section 2, Pt 19C, eff July 1, 2009.

Effect of Amendment

The 2008 amendment added "expend," and substituted "pursuant to" for "for in".

**SECTION 23‑31‑217.** Effect on Section 16‑23‑20.

 Nothing in this article shall affect the provisions of Section 16‑23‑20.

HISTORY: 1996 Act No. 464, Section 7.

**SECTION 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 Section 16‑11‑620. In addition to the penalties provided in Section 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 one year. The prohibition contained in this section does not apply to persons specified in Section 16‑23‑20, item (1).

HISTORY: 1996 Act No. 464, Section 8.

**SECTION 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 one thousand dollars or imprisoned for not more than one year, or both, at the discretion of the court and have his permit revoked for five years.

HISTORY: 1996 Act No. 464, Section 12.

**SECTION 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.

HISTORY: 1996 Act No. 464, Section 14.

**SECTION 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 one‑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 seven inches in diameter with a diagonal line that runs from the lower left to the upper right at a forty‑five degree angle from the horizontal;

 (5) a diameter of a circle; and

 (6) placed not less than forty inches and not more than sixty 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 forty‑eight inches tall in size;

 (2) contain the words "NO CONCEALABLE WEAPONS ALLOWED" in black three‑ 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 thirty‑four inches in diameter with a diagonal line that is two inches wide and runs from the lower left to the upper right at a forty‑five degree angle from the horizontal and must be a diameter of a circle whose circumference is two inches wide;

 (4) placed not less than forty inches and not more than ninety‑six inches above the ground;

 (5) posted in sufficient quantities to be clearly visible from any point of entry onto the premises.

HISTORY: 1996 Act No. 464, Section 13; 2002 Act No. 274, Section 5.

**SECTION 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.

HISTORY: 1998 Act No. 297, Section 5.

ARTICLE 5

Use and Possession of Machine Guns, Sawed‑off Shotguns and Rifles

**SECTION 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 one 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 eighteen inches in length or a weapon made from a shotgun which as modified has an overall length of less than twenty‑six inches or a barrel or barrels of less than eighteen 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 sixteen inches in length or a weapon made from a rifle which as modified has an overall length of less than twenty‑six inches or a barrel or barrels of less than sixteen 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.

HISTORY: 1962 Code Section 16‑121; 1952 Code Section 16‑121; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1990 Act No. 564, Section 2; 1999 Act No. 71, Section 2.

**SECTION 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. Section 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 thirty days of such manufacture and shall be subject to the penalties provided in Section 23‑31‑340 for noncompliance.

HISTORY: 1962 Code Section 16‑125; 1952 Code Section 16‑125; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1978 Act No. 541, Section 4; 1990 Act No. 564, Section 2.

**SECTION 23‑31‑330.** Application and registration of person allowed to possess machine gun or sawed‑off shotgun or rifle.

 (A) Every person permitted by Section 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.

HISTORY: 1962 Code Section 16‑126; 1952 Code Section 16‑126; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1988 Act No. 492, Section 2; 1990 Act No. 564, Section 2.

**SECTION 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 ten thousand dollars or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 16‑127; 1952 Code Section 16‑127; 1942 Code Section 1258‑1; 1934 (38) 1288; 1960 (51) 1602; 1975 (59) 135; 1990 Act No. 564, Section 2; 1993 Act No. 184, Section 58.

**SECTION 23‑31‑350.** Article not applicable to antique firearms.

 The provisions of this article shall not apply to antique firearms.

HISTORY: 1975 (59) 135; 1990 Act No. 564, Section 2.

**SECTION 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 thirty days of their manufacture and it is subject to the penalties provided in Section 23‑31‑340 for noncompliance.

HISTORY: 1978 Act No. 541, Section 2; 1990 Act No. 564, Section 2; 1993 Act No. 184, Section 59.

**SECTION 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 six 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 five thousand dollars or imprisoned for not more than two years, or both.

HISTORY: 1986 Act No. 532, Section 8B; 1990 Act No. 564, Section 2.

ARTICLE 6

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

**SECTION 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 two thousand dollars or imprisoned not more than two years.

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

HISTORY: 1996 Act No. 464, Section 2.

**SECTION 23‑31‑410.** Blood and urine testing.

 (A) A person who uses a firearm within this State shall submit to a SLED‑approved breath test to determine the alcoholic content of the blood and to a urine test to detect the presence of a controlled substance if there is probable cause to believe that the person was using a firearm while under the influence of alcohol or a controlled substance or if the person is arrested lawfully for an offense allegedly committed while he was using a firearm while under the influence of alcohol or a controlled substance. The breath or urine test must be administered at the request of a law enforcement officer who has probable cause to believe the person was using the firearm while under the influence of alcohol or a controlled substance. The administration of either test shall not preclude the administration of the other test. The refusal to submit to a breath or urine test upon the request of a law enforcement officer pursuant to this section is admissible into evidence in a criminal proceeding.

 (B) If the arresting officer does not request a breath or urine test of the person arrested for an offense allegedly committed while the person was using a firearm while under the influence of alcohol or a controlled substance, the person may request the arresting officer to have a breath test made to determine the alcohol content of the person's blood or a urine test for the purpose of determining the presence of a controlled substance. The failure of the person who requests a breath or urine test to actually be so tested shall bar the prosecution of the person for using a firearm while under the influence of alcohol or a controlled substance.

 (C) The provisions of Section 56‑5‑2950 relating to the administration of tests for determining the weight of alcohol in an individual's blood, additional tests at the individual's expense, availability of test information to the individual or the individual's attorney, and liability of medical institutions and persons administering the tests are applicable to this section.

 (D) The results of a test administered pursuant to this section for the purpose of detecting the presence of a controlled substance are not admissible as evidence in a criminal prosecution for the possession of a controlled substance.

 (E) Information obtained pursuant to this section must be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of Section 23‑31‑400 upon request for this information.

HISTORY: 1996 Act No. 464, Section 2.

**SECTION 23‑31‑415.** Testing following death or serious personal injury; effect of refusal; evidentiary use.

 (A) If a law enforcement officer has probable cause to believe that a person used a firearm while under the influence of alcohol or a controlled substance and caused the death or serious bodily injury of an individual, the person shall submit, upon the request of the law enforcement officer, to a test of his blood for the purpose of determining its alcohol content or for the presence of a controlled substance.

 (B) A criminal charge resulting from the incident precipitating the officer's demand for testing should be tried concurrently with a charge of a violation of Section 23‑31‑400. If the charges are tried separately, the fact that the person refused, resisted, obstructed, or opposed testing is admissible at the trial of the criminal offense which precipitated the demand for testing.

 (C) The results of any test administered pursuant to this section for the purpose of detecting the presence of a controlled substance is not admissible as evidence in a criminal prosecution for the possession of a controlled substance.

 Notwithstanding another provision of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section must be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of Section 23‑31‑400 upon request for such information.

HISTORY: 1996 Act No. 464, Section 2.

**SECTION 23‑31‑420.** Presumptions.

 (A) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while using a firearm while under the influence of alcohol or a controlled substance, the results of any test administered pursuant to Section 23‑31‑410 or 23‑31‑415 and this section are admissible into evidence, and the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood or breath, creates the following presumptions:

 (1) If there was at that time five one‑hundredths of one percent or less by weight of alcohol in the person's blood, it must be presumed that the person was not under the influence of alcohol.

 (2) If there was at that time in excess of five one‑hundredths of one percent but less than eight one‑hundredths of one percent by weight of alcohol in the person's blood, this fact does not give rise to any inference that the person was or was not under the influence of alcohol to the extent that his normal faculties were impaired, but this fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

 (3) If there was at that time eight one‑hundredths of one percent or more by weight of alcohol in the person's blood, this fact creates an inference that the person was under the influence of alcohol.

 (B) The percent by weight of alcohol in the blood must be based upon grams of alcohol per one‑hundred milliliters of blood. The provisions of this section must not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcohol.

HISTORY: 1996 Act No. 464, Section 2; 2003 Act No. 61, Section 1.

ARTICLE 7

Local Regulations

**SECTION 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 twenty‑five 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.

HISTORY: 1986 Act No. 532, Section 2; 2008 Act No. 220, Section 1, eff May 21, 2008.

Effect of Amendment

The 2008 amendment designated item (1) and added item (2) relating to discharge on a landowner's own property.

**SECTION 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.

HISTORY: 1986 Act No. 532, Section 3; 2006 Act No. 347, Section 3, eff June 9, 2006.

Effect of Amendment

The 2006 amendment in the first sentence deleted "the use, sale, transportation, or" and added the second sentence relating to the power to confiscate firearms or ammunition.

ARTICLE 8

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

**SECTION 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. Section 926C.

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

 (B) An agency or department within this State may comply with 18 U.S.C. Section 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 one 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 Sections 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. Section 926C, may require the qualified retired law enforcement officer to pay the actual expenses of the training and qualification.

HISTORY: 2005 Act No. 154, Section 3; 2014 Act No. 228 (S.1076), Section 1, eff June 2, 2014.

Effect of Amendment

2014 Act No. 228, Section 1, rewrote subsections (A), (B), (C)(1), and (E).

ARTICLE 10

NICS: Mental Health Adjudication and Commitment Reporting

Editor's Note

2013 Act No. 22, Section 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 five days from the filing of each order and in accordance with procedures developed as required by this act and have one year from this act's effective date to submit retroactive information by court order on such individuals going back a minimum of ten years or, if records are not available as far back as ten years, as far back as records exist."

**SECTION 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. Sections 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.

HISTORY: 2013 Act No. 22, Section 1, eff August 1, 2013.

**SECTION 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 five 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 ten 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.

HISTORY: 2013 Act No. 22, Section 1, eff August 1, 2013.

**SECTION 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. Section 922(g)(4) or Section 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 ten 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 ninety 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. Section 922(g)(4) and Section 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. Section 922(g)(4) or Section 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.

HISTORY: 2013 Act No. 22, Section 1, eff August 1, 2013.

**SECTION 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 two thousand dollars or imprisoned not more than five 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 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 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.

HISTORY: 2013 Act No. 22, Section 1, eff August 1, 2013.

**SECTION 23‑31‑1050.** Definitions for Sections 23‑31‑1030 and 23‑31‑1040.

 As used in Section 23‑31‑1030 and Section 23‑31‑1040:

 (1) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in a firearm other than an antique firearm. The term does not include:

 (a) a shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing; or

 (b) an unloaded, nonmetallic shotgun hull or casing not having a primer.

 (2) "Antique firearm" means:

 (a) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; and

 (b) a replica of a firearm described in subitem (a) if such replica:

 (i) is not designed or redesigned for using rimfire or conventional centerfire‑fixed ammunition; or

 (ii) uses rimfire or conventional centerfire‑fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

 (3) "Firearm" means a weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such weapon; a firearm muffler or firearm silencer; or a destructive device; but the term does not include an antique firearm. In the case of a licensed collector, the term means only curios and relics.

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

 (5) "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 such assembly or fabrication.

HISTORY: 2013 Act No. 22, Section 1, eff August 1, 2013.

**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 Section 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.

HISTORY: 2013 Act No. 22, Section 1, eff August 1, 2013.