~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

June 2, 2015

**H. 3545**

Introduced by Reps. Gambrell, Weeks, Bedingfield, V.S. Moss, Clemmons, Forrester, Gagnon, D.C. Moss, Pitts, Riley, G.M. Smith, G.R. Smith, White and Yow

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Read the first time March 25, 2015.

**A** **BILL**

TO AMEND SECTION 16-11-110, AS AMENDED, RELATING TO ARSON, SO AS TO RESTRUCTURE THE ELEMENTS OF THE DEGREES OF ARSON.

Amend Title To Conform

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

SECTION 1. Section 16‑11‑110 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 16‑11‑110. (A) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a ~~dwelling house,~~ building, structure, or any property specified in subsections (B) and (C), whether the property of ~~himself~~ the person or another, which results, either directly or indirectly, in ~~the~~ death or serious bodily injury ~~of~~ to a person is guilty of the felony of arson in the first degree and, upon conviction, must be imprisoned not less than thirty years.

(B) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, church or place of worship, public or private school facility, manufacturing plant or warehouse, building where business is conducted, institutional facility, or any structure designed for human occupancy including local and municipal buildings, ~~or any property~~ whether the property of ~~himself~~ the person or another, ~~which results, either directly or indirectly, in serious bodily injury to a person~~ is guilty of the felony of arson in the second degree and, upon conviction, must be imprisoned not less than three nor more than twenty‑five years.

(C) A person commits a violation of the provisions of this subsection who wilfully and maliciously:

(1) causes an explosion, sets fire to, burns, or causes ~~to be burned or aids, counsels, or procures~~ a burning ~~that~~ which results in damage to a ~~dwelling house,~~ building~~,~~ or structure other than those specified in subsection (A) or (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or ~~any~~ personal property~~,~~; or

(2) aids, counsels, or procures a burning that results in damage to a building or structure other than those specified in subsection (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property with intent to destroy or damage by explosion or fire, whether the property of ~~himself~~ the person or another~~, which results, either directly or indirectly, in bodily injury to a person or damage to the property~~.

A person who violates the provisions of this subsection is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

(D) For purposes of this section, ‘damage’ means an application of fire or explosive that results in burning, charring, blistering, scorching, smoking, singeing, discoloring, or changing the fiber or composition of a building, structure, or any property specified in this section.”

SECTION 2. Section 16‑23‑500 of the 1976 Code is amended to read:

“Section 16‑23‑500. (A) It is unlawful for a person who has been convicted of a violent crime, as defined by Section 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 two thousand dollars or imprisoned not more than five 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 Section 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 Section 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.”

SECTION 3. Section 22‑3‑560 of the 1976 Code is amended to read:

“Section 22‑3‑560. Magistrates may punish breaches of the peace by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding thirty days, or both~~, all breaches of the peace~~.”

SECTION 4. Section 22‑5‑920(B) of the 1976 Code is amended to read:

“(B)(1) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of ~~his~~ the defendant’s sentence, including probation and parole, may apply, or cause someone acting on ~~his~~ the defendant’s behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction.

(2) However, this section does not apply to:

(a) an offense in which registration on the sexual offender registry is required by statute or ordered by a court, except in cases in which a determination is made by the sentencing court that the sexual conduct with a victim of at least fourteen years of age was consensual;

(b) an offense involving the operation of a motor vehicle~~,~~;

(c) ~~to~~ a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized~~,~~;

(d) ~~to~~ an offense classified as a violent crime in Section 16‑1‑60~~,~~; or

(e) ~~to~~ an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16‑25‑30.

(3) If the defendant has had no other conviction during the five‑year period following completion of ~~his~~ the defendant’s sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have ~~his~~ the person’s records expunged under this section more than once. A person may have ~~his~~ the person’s record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have ~~his~~ the person’s record expunged pursuant to the provisions of this section.”

SECTION 5. Section 24‑19‑10(d) of the 1976 Code is amended to read:

“(d) ‘Youthful offender’ means an offender who is:

(i) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63‑19‑1210 for allegedly committing an offense that is not a violent crime, as defined in Section 16‑1‑60, and that is a misdemeanor, a Class D, Class E, or Class F felony, as defined in Section 16‑1‑20, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(ii) seventeen but less than twenty‑five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16‑1‑60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(iii) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63‑19‑1210 for allegedly committing burglary in the second degree (Section 16‑11‑312). ~~The~~ If the offender committed burglary in the second degree pursuant to Section 16‑11‑312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three‑year minimum sentence;

(iv) seventeen but less than twenty‑one years of age at the time of conviction for burglary in the second degree (Section 16‑11‑312). ~~The~~ If the offender committed burglary in the second degree pursuant to Section 16‑11‑312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three‑year minimum sentence;

(v) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63‑19‑1210 for allegedly committing criminal sexual conduct with a minor in the third degree pursuant to Section 16‑3‑655(C), and the alleged offense involved consensual sexual conduct with a person who was at least fourteen years of age at the time of the act; or

(vi) seventeen but less than twenty‑five years of age at the time of conviction for committing criminal sexual conduct with a minor in the third degree pursuant to Section 16‑3‑655(C), and the conviction resulted from consensual sexual conduct, provided the offender was eighteen years of age or less at the time of the act and the other person involved was at least fourteen years of age at the time of the act.”

SECTION 6. Section 24‑21‑5(1) of the 1976 Code is amended to read:

“(1) ‘Administrative monitoring’ means a form of monitoring by the department beyond the end of the term of supervision in which the only remaining condition of supervision not completed is the payment of financial obligations. Under administrative monitoring, the only condition of the monitoring shall be the requirement that reasonable progress be made toward the payment of financial obligations. The payment of monitoring mandated fees shall continue. When an offender is placed on administrative monitoring, ~~he~~ the offender shall register with the department’s representative in ~~his~~ the offender’s county, notify the department of ~~his~~ the offender’s current address each quarter, and make payments on financial obligations owed, until the financial obligations are paid in full or a consent order of judgment is filed. Written notice of petitions for civil contempt as set forth in Section 24‑21‑100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring must be given by the department by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director’s designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petitions for civil contempt as set forth in Section 24‑21‑100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring have been met even if the notice has not been received by the offender. If an offender fails to appear for the civil contempt proceeding, the court may issue a bench warrant for the offender’s arrest for failure to appear, or the court may proceed in the offender’s absence and issue a bench warrant along with an order imposing a term of confinement as set forth in Section 24‑21‑100.”

SECTION 7. Section 24‑21‑100(A) of the 1976 Code is amended to read:

“(A) Notwithstanding the provisions of Section 24‑19‑120, 24‑21‑440, 24‑21‑560(B), or 24‑21‑670, when an individual has not fulfilled ~~his~~ the individual’s obligations for payment of financial obligations by the end of ~~his~~ the individual’s term of supervision, then the individual shall be placed under quarterly administrative monitoring, as defined in Section 24‑21‑5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed. If the individual under administrative monitoring fails to make reasonable progress toward the payment of such financial obligations, as determined by the department, the department may petition the court to hold an individual in civil contempt for failure to pay the financial obligations. The department shall provide written notice of the petition and any scheduled contempt by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director’s designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petition and any scheduled contempt hearing have been met even if the notice has not been received by the offender. If the court finds the individual has the ability to pay but has not made reasonable progress toward payment, the court may hold the individual in civil contempt of court and may impose a term of confinement in the local detention center until payment of the financial obligations, but in no case to exceed ninety days of confinement. Following any term of confinement, the individual shall be returned to quarterly administrative monitoring by the department. If the individual under administrative monitoring does not have the ability to pay the financial obligations and has no reasonable likelihood of being able to pay in the future, the department may submit a consent order of judgment to the court, which shall relieve the individual of any further administrative monitoring.”

SECTION 8. Section 24‑21‑280(D) of the 1976 Code is amended to read:

“(D) A probation agent, in consultation with ~~his~~ the probation agent’s supervisor, shall identify each individual under the department’s supervision ~~of the department~~, with a term of supervision of more than one year, and shall calculate and award compliance credits as provided in this section. Credits may be earned from the first day of supervision on a thirty‑day basis, but ~~shall~~ must not be applied until after each thirty‑day period of supervision has been completed. Compliance credits may be denied for noncompliance on a thirty‑day basis as determined by the department. The denial of nonearned compliance credits is a final decision of the department and is not subject to appeal. An individual may earn up to twenty days of compliance credits for each thirty‑day period in which ~~he~~ the department determines that the individual has substantially fulfilled all of the conditions of ~~his~~ the individual’s supervision~~, has no new arrests, and has made all scheduled payments of his financial obligations~~.”

SECTION 9. Section 44‑53‑370(b) of the 1976 Code is amended to read:

“(b) A person who violates subsection (a) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty‑five thousand dollars, or both. For a second offense, ~~or if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs,~~ the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, ~~or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs,~~ the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, ~~or, if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs,~~ the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, ~~or, if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs,~~ the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted~~;~~.”

SECTION 10. Section 44‑53‑375(B) of the 1976 Code is amended to read:

“(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44‑53‑370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty‑five thousand dollars, or both;

(2) for a second offense ~~or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs~~, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense ~~or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs~~, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.”

SECTION 11. Section 44‑53‑470 of the 1976 Code is amended to read:

“Section 44‑53‑470. (A) An offense is considered a second or subsequent offense if:

(1) for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous five years of a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession;

(2) for an offense involving marijuana pursuant to the provisions of this article, the offender has at any time been convicted of a first, second, or subsequent violation of a marijuana offense provision of this article or of another state or federal statute relating to marijuana offenses, except a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana offenses;

(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and

(4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

(B) In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

~~(B)~~(C) If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later. For purposes of this section, confinement includes incarceration and supervised release, including, but not limited to, probation, parole, house arrest, community supervision, work release, and supervised furlough.”

SECTION 12. Section 56‑1‑396(F) of the 1976 Code is amended to read:

“(F) Qualifying suspensions include, and are limited to, suspensions pursuant to Sections 34‑11‑70, 56‑1‑120, 56‑1‑170, 56‑1‑185, 56‑1‑240, 56‑1‑270, 56‑1‑290, 56‑1‑460(A)(1), 56‑2‑2740, 56‑9‑351, 56‑9‑354, 56‑9‑357, 56‑9‑430, 56‑9‑490, 56‑9‑610, 56‑9‑620, 56‑10‑225, 56‑10‑240, 56‑10‑270, 56‑10‑520, 56‑10‑530, and 56‑25‑20. Qualifying suspensions do not include suspensions pursuant to Section 56‑5‑2990 or Section 56‑5‑2945, and do not include suspensions pursuant to Section 56‑1‑460 if the person drives a motor vehicle when the person’s license has been suspended or revoked pursuant to Section 56‑5‑2990 or Section 56‑5‑2945.”

SECTION 13. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 14. This act takes effect upon approval by the Governor.

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