**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3491**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Burns, Chumley, McGarry, Haddon, V.S. Moss, Taylor, Hixon, Hiott, Forrest, Pope and Daning

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Introduced in the House on January 12, 2021

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

Summary: Citizen and Taxpayer Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/16/2020 House Prefiled

12/16/2020 House Referred to Committee on **Judiciary**

1/12/2021 House Introduced and read first time ([House Journal‑page 210](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 210](file:///h:\hj\20210112.docx))

2/10/2021 House Member(s) request name added as sponsor: Taylor, Hixon, Hiott, Forrest

3/17/2021 House Member(s) request name added as sponsor: Pope

6/21/2021 House Member(s) request name added as sponsor: Daning

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**VERSIONS OF THIS BILL**

[12/16/2020](file:///p:\pprever\2021-22\3491_20201216.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “CITIZEN AND TAXPAYER PROTECTION ACT”; BY ADDING SECTION 8‑1‑90 SO AS TO DECLARE THAT A PUBLIC OFFICER ORDERING LAW ENFORCEMENT TO PROHIBIT ENFORCEMENT PROVISIONS OF THE CITIZEN AND TAXPAYER PROTECTION ACT IS GUILTY OF MISCONDUCT IN OFFICE; BY ADDING SECTION 10‑1‑220 SO AS TO PROHIBIT CAMPING ON STATE‑OWNED LAND THAT IS NOT DESIGNATED FOR CAMPING; BY ADDING SECTION 16‑3‑605 SO AS TO DESIGNATE AN ASSAULT ON A FIRST RESPONDER AS A SEPARATE CRIME; BY ADDING SECTION 16‑5‑150 SO AS TO PROHIBIT THE UNLAWFUL OBSTRUCTION OF PUBLIC HIGHWAYS AND ROADS; TO AMEND SECTION 16‑3‑210, RELATING TO ASSAULT AND BATTERY BY A MOB, SO AS TO ESTABLISH A PRESUMPTION FOR PREMEDITATION AND TO REMOVE NONBINDING LAW; TO AMEND SECTION 16‑3‑1075, RELATING TO FELONY CARJACKING, SO AS TO ADD A PRESUMPTION WHEN AN ATTEMPT TO TAKE A MOTOR VEHICLE IS COMMITTED BY A MOB; TO AMEND SECTION 16‑5‑130, RELATING TO PENALTIES FOR INSTIGATING, AIDING, OR PARTICIPATING IN A RIOT, SO AS TO INCLUDE A MANDATORY ORDER OF RESTITUTION UPON CONVICTION; TO AMEND SECTION 16‑11‑440, SO AS TO INCLUDE REFERENCES TO THE DEFINITION OF “MOB”; TO AMEND SECTION 16‑23‑410, RELATING TO POINTING A FIREARM AT ANOTHER PERSON, SO AS TO PROVIDE A DEFENSE WHEN A PERSON IS BEING CONFRONTED BY A MOB; AND TO AMEND SECTION 23‑31‑520, RELATING TO THE POWER TO REGULATE PUBLIC USE OF FIREARMS AND THE CONFISCATION OF FIREARMS OR AMMUNITION, SO AS TO REMOVE THE AUTHORITY OF A COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION TO REGULATE GUN DISCHARGE OR THE BRANDISHMENT OF A FIREARM.

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

SECTION 1. This act may be cited as the “Citizen and Taxpayer Protection Act”.

SECTION 2. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑90. A public officer ordering law enforcement to stand down or otherwise not enforce any provision of the Citizen and Taxpayer Protection Act is guilty of misconduct in office and can be punished accordingly.”

SECTION 3. Chapter 1, Title 10 of the 1976 Code is amended by adding:

“Section 10‑1‑220. (A) As used in this section, ‘camping’ means at any time between ten o’clock p.m. and seven o’clock a.m.:

(1) erecting, placing, maintaining, leaving, allowing to remain, or using a piece of furniture, tent, raised tarp, or other temporary shelter, structure, or furniture;

(2) sleeping or making preparation to sleep, including laying down a sleeping bag, blanket, or other material used for bedding;

(3) placing or storing personal belongings for future use, including storing food for consumption;

(4) carrying on cooking activities, whether by fire or use of artificial means, such as a propane stove or other heat‑producing portable cooking equipment;

(5) making a fire or preparing to make a fire; or

(6) doing any digging or earthbreaking.

(B) An area of state‑owned land may be designated as a camping area by the department, agency, or official responsible for the operation, protection, or maintenance of the property in question. The area’s designation as a camping area may be accomplished by means of signage, advertisement, or other notice designed to make known its availability for the activity of camping.

(C)(1) It is an offense for a person to engage in camping on property owned by the State knowing that the area on which the camping occurs is not specifically designated for use as a camping area by the department, agency, or official responsible for the land.

(2) The department, agency, or official responsible for the operation, protection, or maintenance of the property may designate an area as a camping area by means of signage, advertisement, or other notice designed to make known its availability for camping. However, a person is not guilty of a violation of item (1) unless the person was notified by an official responsible for the protection of the property in question that camping is prohibited and continued to engage in camping or returned within twenty four hours of the warning and continued to engage in camping.

(3) A person is not guilty of a violation of item (1) if the person was given permission or authorization by the department, agency, or official responsible for the operation, protection, or maintenance of the property to engage in camping on the property.

(4) Any items used to commit a violation of this section, including items abandoned at the location of the offense, are subject to confiscation, seizure, and claiming in accordance with subsection (D).

(D) Any property subject to confiscation or seizure under subsection (C), unclaimed in connection with a violation of subsection (C), or left unattended after arrest or issuance of a citation for camping in violation of subsection (C), and taken into state custody must be held by the state agency or its agent in a secure location for a period of ninety days. Notice containing the contact information of the state agency or agent holding the property must be posted at the nearest reasonable location to the place from which the property was removed. If the property is not claimed within ninety days of being taken into custody, the property is deemed abandoned and the agency or agent may dispose of the property, unless the property is needed for evidence in a criminal proceeding. If a person claiming any such property within ninety days of the property being taken into custody produces identification and signs a release form providing such person’s name and contact information and swearing under oath that the property belongs to the person, the state agency or agent must return the property to the person, unless the property is needed for evidence in a criminal proceeding, in which case it must be returned following the conclusion of that proceeding. The state agency or agent may charge a reasonable storage fee for storing the property. The State and state employees, agents, and contractors are immune from liability for confiscation of property in compliance with this section.

(E) A violation of this section is a felony. In any sentence imposed for a violation of this section, the court must include an order of restitution for any property damage or loss incurred as a result of the offense.

(F) Nothing in this section is intended to preempt or prevent a state department, agency, or official with responsibility for state property from enacting or enforcing other lawful and reasonable rules, regulations, or statutes that concern the use of and access to state property. However, if any such rule, regulation, or statute is in conflict with this section, this section shall prevail and the prohibition against camping on state property in areas not designated as camping areas be a uniform one.”

SECTION 4. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑605. (A) A person commits assault against a first responder who is discharging or attempting to discharge the first responder’s official duties, who knowingly:

(1) causes bodily injury to a first responder; or

(2) causes physical contact with a first responder and a reasonable person would regard the contact as extremely offensive or provocative including, but not limited to, spitting, throwing, or otherwise transferring bodily fluids, bodily pathogens, or human waste onto a first responder.

(B) A person commits aggravated assault against a first responder who is discharging or attempting to discharge the first responder’s official duties, who knowingly commits an assault under subsection (A), and the assault:

(1) results in serious bodily injury to the first responder;

(2) results in the death of the first responder;

(3) involved the use or display of a deadly weapon; or

(4) involved strangulation or attempted strangulation.

(C)(1) A person who commits an assault as defined in subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined five thousand dollars and must be imprisoned for not less than thirty days. A person convicted of an assault as defined in subsection (A) is not eligible for release from confinement until he serves the entire thirty‑day mandatory minimum sentence.

(2) A person who commits an assault as defined in subsection (B) is guilty of a felony and, upon conviction, must be fined fifteen thousand dollars and must be imprisoned for not less than ninety days. A person convicted of assault as defined in subsection (B) is not eligible for release from confinement until he serves the entire ninety‑day mandatory minimum sentence.

(D) For purposes of this section, ‘first responder’:

(1) means a law enforcement officer, firefighter, emergency services personnel, or other person who responds to calls for emergency assistance from a 911 call; and

(2) includes South Carolina Department of Public Safety officers, South Carolina Law Enforcement Division officers, South Carolina Department of Natural Resources officers, and park rangers employed by the South Carolina Department of Parks, Recreation and Tourism.”

SECTION 5. Chapter 5, Title 16 of the 1976 Code is amended by adding:

“Section 16‑5‑150. (A) It is unlawful to, without legal privilege, intentionally, knowingly, or recklessly:

(1) obstruct a highway, street, sidewalk, railway, waterway, elevator aisle, or hallway to which the public or a substantial portion of the public, has access; or any other place used for the passage of persons, vehicles, or conveyances, whether the obstruction arises from a person’s acts alone or from the a person’s acts and the acts of others; or

(2) disobey a reasonable request or order to move issued by a person known to be a law enforcement officer, a firefighter, or a person with authority to control the use of the premises to:

(a) prevent the obstruction of a highway or passageway; or

(b) maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(B) ‘Obstruct’ means to render impassable or to render passage unreasonably inconvenient or potentially injurious to persons or property.

(C)(1) Upon conviction, a violation of subsection (A) is a misdemeanor.

(2) Notwithstanding item (1), a violation of subsection (A)(1) is a felony if the obstruction prevents an emergency vehicle from accessing a highway or street, the obstruction prevents a first responder from responding to an emergency, or if the obstruction prevents access to an emergency exit. For purposes of this item:

(a) ‘Emergency vehicle’ means any vehicle of a governmental department or public service corporation when responding to an emergency, any vehicle of a police or fire department, and any ambulance.

(b) ‘Emergency exit’ means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.

(c) ‘First responder’ has the same definition as used in Section 16‑3‑605(D).

(D)(1) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, if:

(a) solicitation and collection of charitable donations at a highway or street intersection were undertaken by members of an organization that has received a determination of exemption from the Internal Revenue Service under 26 U.S.C. Section 501(c)(3) or (4);

(b) the members of the organization undertook reasonable and prudent precautions to prevent both disruption of traffic flow and injury to a person or property; and

(c) the solicitation and collection at the specific time and place and the specific precautions were proposed in advance to, and received the prior written approval of, the administrative head of the local law enforcement agency in whose jurisdiction the intersection is located.

(2) No liability for any accident or other occurrence that arises from solicitations attaches to the sheriff or government involved in issuing the permit, but must be borne solely by the organization obtaining the permit.

(3) This subsection does not supersede or affect any ordinance relative to collecting donations at a public intersection.”

SECTION 6. Section 16‑3‑210 of the 1976 Code is amended to read:

“Section 16‑3‑210. (A) For purposes of this section, a ‘mob’ is defined as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another. ‘Premeditation’ is presumed when: (1) assemblage is instigated, directly or indirectly by digital media or telephonic communication, or (2) an assault is perpetrated by use of weapons as defined in Section 16‑23‑405 which were transported for such use pursuant to agreement of one or more persons.

(B) Any act of violence inflicted by a mob upon the body of another person, which results in the death of the person, shall constitute the felony ~~crime~~ of assault and battery by mob in the first degree and, upon conviction, an offender shall be punished by imprisonment for not less than thirty years.

(C) Any act of violence inflicted by a mob upon the body of another person, which results in serious bodily injury to the person, shall constitute the felony crime of assault and battery by mob in the second degree and, upon conviction, an offender shall be punished by imprisonment for not less than three years, nor more than twenty‑five years.

(D) Any act of violence inflicted by a mob upon the body of another person, which results in bodily injury to the person, shall constitute the misdemeanor crime of assault and battery by mob in the third degree and, upon conviction, an offender shall be punished by imprisonment for not more than one year.

(E) ~~When any mob commits an act of violence, the sheriff of the county where the crime occurs and the solicitor of the circuit where the county is located shall act as speedily as possible to apprehend and identify the members of the mob and bring them to trial.~~

~~(F)~~ ~~The solicitor of any circuit has summary power to conduct any investigation deemed necessary by him in order to apprehend the members of a mob and may subpoena witnesses and take testimony under oath.~~

~~(G)~~ This article shall not be construed to relieve a member of any such mob from civil liability.”

SECTION 7. Section 16‑3‑1075 of the 1976 Code is amended to read:

“Section 16‑3‑1075. (A) ~~For purposes of this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.~~

~~(B)~~ A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle. Upon conviction for this offense, a person must:

(1) be imprisoned not more than twenty years; or

(2) if great bodily injury results, be imprisoned not more than thirty years.

(B) For purposes of this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(C) The attempt to take a motor vehicle by force is presumed when a mob, as defined in Section 16‑3‑210, obstructs or detains a vehicle.”

SECTION 8. Section 16‑5‑130 of the 1976 Code is amended to read:

“Section 16‑5‑130. (A) A person who is convicted of riot, or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is guilty of a:

(1) felony and must be imprisoned not more than five years or fined not more than one thousand dollars, or both, if the purpose of the assembly, or of the acts done or threatened or intended by the persons engaged, is to resist the enforcement of a statute of this State, or of the United States, or to obstruct any public officer of this State, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty; or if the offender carries, at the time of the riot, firearms, or any other dangerous weapon, or is disguised;

(2) misdemeanor and must be imprisoned not more than two years or fined not more than five hundred dollars, or both, if the offender directs, advises, encourages, or solicits other persons, present or participating in the riot or assembly, to acts of force or violence;

(3) misdemeanor and must be imprisoned not more than two years or fined not more than two hundred and fifty dollars, or both, in any case, not embraced within the foregoing subdivisions of this section.

(B) In any sentence imposed for a violation of this section, the court must include an order of restitution for any property damage or loss incurred as a result of the offense.

(C) This section must not be construed to prevent the peaceable assembling of persons for lawful purposes of protest or petition.”

SECTION 9. Section 16‑11‑440 of the 1976 Code is amended to read:

“Section 16‑11‑440. (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom ~~the~~ deadly force is used is ~~in the process of~~ unlawfully ~~and~~ or forcefully entering, or ~~has unlawfully and forcibly~~ attempting to ~~entered~~ enter a dwelling, residence, or occupied motor vehicle, or ~~if he~~ removes or is attempting to remove another ~~person~~ against his will from ~~the~~ a dwelling, residence, or occupied motor vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred or is confronted by a mob as defined in Section 16‑3‑210.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

(C) A person ~~who is~~ not engaged in an unlawful activity ~~and~~ who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person, or to prevent the commission of a violent crime as defined in Section 16‑1‑60.

(D) A person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied motor vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16‑1‑60.

(E) A person who by force enters or attempts to enter a dwelling, residence, or occupied motor vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

(F) A person who is acting under circumstances described in Section 16‑3‑210 or Section 16‑11‑440 is presumed to have the intent to commit an unlawful act.

(G) Any determination of immunity under this section shall be decided by the presiding judge of any proceeding prior to trial and any such determination that immunity does not apply shall be deemed a final order which is immediately appealable. If a finding of immunity is upheld upon any appeal of that decision, the State shall bear all fees and costs of the accused.”

SECTION 10. Section 16‑23‑410 of the 1976 Code is amended to read:

“Section 16‑23‑410. (A) It is unlawful for a person to present or point ~~at another person~~ a loaded or unloaded firearm at another person unless that person is, or has reason to believe, that they are being confronted by a mob as defined in Section 16‑3‑210.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years. This section must not be construed to abridge the right of self‑defense or ~~to apply~~ be applied to ~~theatricals~~ theatrical or like performances, parades, and other exemptions to the offense of carrying a pistol.”

SECTION 11. Section 23‑31‑520 of the 1976 Code is amended to read:

“Section 23‑31‑520. ~~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.”

SECTION 12. This act takes effect upon approval by the Governor.

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