**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3140**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Gilliard

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Introduced in the House on January 11, 2011

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

Summary: Weapons

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/7/2010 House Prefiled

12/7/2010 House Referred to Committee on **Judiciary**

1/11/2011 House Introduced and read first time ([House Journal‑page 60](file:///h:\hj%20archive\2011\01-11-11.docx))

1/11/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 60](file:///h:\hj%20archive\2011\01-11-11.docx))

**VERSIONS OF THIS BILL**

[12/7/2010](file:///p:\pprever\2011-12\3140_20101207.docx)

**A** **BILL**

TO AMEND SECTION 16‑23‑50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PENALTIES FOR VIOLATIONS OF CERTAIN OFFENSES INVOLVING WEAPONS, SO AS TO INCLUDE ASSAULT WEAPONS IN THE PURVIEW OF THE STATUTE AND INCREASE THE PENALTIES FOR A VIOLATION AND CREATE A TWO‑TIERED PENALTY SCHEME; AND TO AMEND SECTION 16‑23‑210, RELATING TO DEFINITIONS FOR PURPOSES OF THE ARTICLE, SO AS TO DEFINE THE TERM “ASSAULT WEAPON”.

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

SECTION 1. Section 16‑23‑50 of the 1976 Code, as last amended by Act 294 of 2004, is further amended to read:

“Section 16‑23‑50. (A)~~(1)~~ A person, including a dealer, who violates the provisions of this article, except Section 16‑23‑20, is guilty of a felony and, upon conviction~~,~~:

(1) for a first offense, must be fined not more than ~~two~~ ten thousand dollars or imprisoned not more than ~~five~~ ten years, or both~~.~~; and

(2) for a second or subsequent offense, must be fined not more than twenty‑five thousand dollars or imprisoned for a mandatory minimum term of imprisonment of five years, no part of which may be suspended nor probation granted, and not more than twenty years, or both.

~~(2)~~(B) A person violating the provisions of Section 16‑23‑20 is guilty of a ~~misdemeanor~~ felony and, upon conviction~~,~~:

(1) for a first offense, must be fined not more than ~~one~~ five thousand dollars or imprisoned not more than ~~one year~~ five years, or both~~.~~; and

(2) for a second or subsequent offense, must be fined not more than ten thousand dollars or imprisoned for a mandatory term of imprisonment of five years, no part of which may be suspended nor probation granted, and not more than ten years, or both.

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

SECTION 2. Section 16‑23‑210 of the 1976 Code is amended to read:

“Section 16‑23‑210. ~~When~~ As 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.~~

(1) ‘Antique firearm’ means a 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 of it, whether actually manufactured before or after the year 1898, and also a 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.

(2) ‘Assault weapon’ means a firearm with any of the following characteristics:

(a) all semiautomatic action, centerfire rifles with a detachable magazine with a capacity of twenty‑one or more rounds;

(b) all semiautomatic shotguns with a folding stock or a magazine capacity of more than six rounds, or both;

(c) a firearm which has been modified to be operable as an assault weapon as defined in this item; and

(d) any part or combination of parts designed or intended to convert a firearm into an assault weapon, including a detachable magazine with a capacity of twenty‑one or more rounds, or any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.

‘Assault weapon’ does not include weapons that do not use fixed cartridges, weapons that were in production prior to 1898, manually operated bolt‑action weapons, lever‑action weapons, slide‑action weapons, single‑shot weapons, multiple‑barrel weapons, revolving‑cylinder weapons, semiautomatic weapons for which there is no fixed magazine with capacity of twenty‑one or more rounds available, semiautomatic weapons that use exclusively en bloc clips, semiautomatic weapons in production prior to 1954, rimfire weapons that employ a tubular magazine, a firearm that use .22 caliber rimfire ammunition, or an assault weapon which has been modified either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon.

(3) ‘Machine gun’ applies to and includes a 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 also includes the frame or receiver of this type of 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 the parts are in the possession or under the control of a person.

(4) ‘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.

(5) ‘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 a weapon which may be readily restored to fire a fixed cartridge but does not include an antique firearm as described in this section.

(6) ‘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.

(7) ‘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.

(8) ‘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 a weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section. ”

SECTION 3. The repeal or amendment by this act of 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 4. This act takes effect upon approval by the Governor.

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