**A** **BILL**

TO AMEND CHAPTER 23, TITLE 16 OF THE 1976 CODE, RELATING TO OFFENSES INVOLVING WEAPONS, BY ADDING ARTICLE 2, TO REQUIRE THAT ANY FIREARM TRANSFER MUST BE PRECEDED BY A CRIMINAL BACKGROUND CHECK PERFORMED BY A LICENSED FIREARMS DEALER WITH THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, AND TO PROVIDE FOR EXCEPTIONS, NOTICE, AND CRIMINAL PENALTIES FOR VIOLATIONS OF THIS PROVISION.

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

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

“ARTICLE 2

Background Checks for Firearm Sales and Transfers

Section 16‑23‑100. As used in this article:

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

(2) ‘Licensed dealer’ means the holder of any federal firearms licensed under 18 U.S.C. Section 923(a).

(3) ‘Transfer’ means to sell, furnish, give, lend, deliver, or otherwise provide, with or without consideration.

(4) ‘Transferee’ means a person who receives or intends to receive a firearm in a sale or transfer.

(5) ‘Transferor’ means a person who is not a licensed dealer and who, pursuant to the provisions of this article, transfers or attempts to transfer a firearm to an unlicensed transferee.

Section 16‑23‑110. (A)(1) It is unlawful for a transferor to transfer a firearm to an unlicensed transferee, unless a licensed dealer has first taken possession of the firearm for the purpose of complying with Section 16‑23‑120.

(2) Upon taking possession of a firearm from a transferor under subsection (A)(1), a licensed dealer shall comply with all requirements of this article and all applicable federal law as if the licensed dealer were transferring the firearm from the inventory of the licensed dealer to the unlicensed transferee.

(3) If a transfer of a firearm pursuant to subsection (A) will not be completed for any reason after a licensed dealer takes possession of the firearm, including because the transfer of the firearm to, or receipt of the firearm by, the unlicensed transferee would violate this chapter, then the return of the firearm to the transferor by the licensed dealer shall not constitute the transfer of a firearm for the purposes of this article.

(B) Subsection (A) shall not apply to:

(1) a law enforcement agency or any law enforcement officer, armed private security professional, or member of the armed forces, to the extent the officer, professional, or member is acting within the course and scope of his employment and official duties;

(2) a transfer that is a loan or bona fide gift between spouses, between domestic partners, between parents and their children, including step‑parents and their step‑children, between siblings, between aunts or uncles and their nieces or nephews, or between grandparents and their grandchildren, if the transferor has no reason to believe that the transferee will use or intends to use the firearm in a crime or is prohibited from possessing firearms under state or federal law;

(3) a transfer to an executor, administrator, trustee, or personal representative of an estate or a trust that occurs by the operation of law upon the death of another person;

(4) a temporary transfer that is necessary to prevent imminent death or great bodily harm, including harm to self, family, household members, or others, if the possession by the transferee lasts only as long as immediately necessary to prevent imminent death or great bodily harm, including the harm of domestic violence, dating partner violence, sexual assault, stalking, or domestic abuse; or

(5) a temporary transfer if the transferor has no reason to believe that the transferee will use or intends to use the firearm in a crime or is prohibited from possessing firearms under state or federal law and if the transferee’s possession of the firearm is exclusively:

(a) at a shooting range or in a shooting gallery or other area designated for the purpose of target shooting;

(b) while reasonably necessary for the purposes of hunting, trapping, or fishing, if the transferor:

(i) has no reason to believe that the transferee intends to use the firearm in a place where it is illegal; and

(ii) has reason to believe that the transferee will comply with all licensing and permit requirements for such hunting, trapping, or fishing; or

(c) while in the presence of the transferor.

Section 16‑23‑120. (A) For any sale or transfer of a firearm, it is unlawful for a licensed dealer to deliver a firearm to any transferee unless the licensed dealer contacts the National Instant Criminal Background Check System (NICS) to conduct a background check on the transferee and complies with all applicable provisions of 18 U.S.C Section 922(t).

(B) It is unlawful for a licensed dealer to transfer the possession of, or title to, a firearm to a transferee who is not so licensed unless the licensed dealer has provided the transferee with a notice of the prohibition under Section 16-23-110 and the transferee has certified that he has been provided with this notice on a form prescribed by the South Carolina Law Enforcement Division. The licensed dealer must retain a copy of the notice certified by the transferee for at least five years.

Section 16‑23‑130. A person who violates the provisions of this article is guilty of a Class A misdemeanor and, upon conviction, must be imprisoned not more than three years, fined not more than two thousand dollars, or both.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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