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

**Concealable weapons, carrying of concealed weapons into businesses that sell alcohol for on-premises consumption, exception when notice posted, penalties**

SECTION 1. Section 16-23-465 of the 1976 Code, as last amended by Act 274 of 2002, is further amended to read:

“Section 16-23-465. (A) In addition to the penalties provided for by Sections 16-11-330, 16-11-620, 16-23-460, 23-31-220, and Article 1, Chapter 23, Title 16, a person convicted of carrying a firearm into a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

In addition to the penalties described above, a person who violates this section while carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23 must have his concealed weapon permit revoked for a period of five years.

(B)(1) This section does not apply to a person carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23; however, the person shall not consume alcoholic liquor, beer, or wine while carrying the concealable weapon on the business’ premises. A person who violates this item may be charged with a violation of subsection (A).

(2) A property owner, holder of a lease interest, or operator of a business may prohibit the carrying of concealable weapons into the business by posting a ‘NO CONCEALABLE WEAPONS ALLOWED’ sign in compliance with Section 23-31-235. A person who carries a concealable weapon into a business with a sign posted in compliance with Section 23-31-235 may be charged with a violation of subsection (A).

(3) A property owner, holder of a lease interest, or operator of a business may request that a person carrying a concealable weapon leave the business’ premises, or any portion of the premises, or request that a person carrying a concealable weapon remove the concealable weapon from the business’ premises, or any portion of the premises. A person carrying a concealable weapon who refuses to leave a business’ premises or portion of the premises when requested or refuses to remove the concealable weapon from a business’ premises or portion of the premises when requested may be charged with a violation of subsection (A). ”

**Concealable Weapon permits, definitions, online applications, five-year permits**

SECTION 2. A. Section 23-31-210 of the 1976 Code, as last amended by Act 347 of 2006, is further amended to read:

“Section 23-31-210. 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, has successfully 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.”

B. Section 23-31-215 of the 1976 Code, as last amended by Act 349 of 2008, is further amended to read:

“Section 23-31-215. (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, may only 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) 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.

(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."

C. Section 16-23-20(9)(a) of the 1976 Code, as last amended by Act 28 of 2007, is further amended to read:

"(a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle; however, this item is not violated if the glove compartment, console, or trunk is opened in the presence of a law enforcement officer for the sole purpose of retrieving a driver's license, registration, or proof of insurance. If the person has been issued a concealed weapons permit pursuant to Article 4, Chapter 31, Title 23, then the person also may secure his weapon under a seat in a vehicle, or in any open or closed storage compartment within the vehicle's passenger compartment; or"

D. Section 16-23-10(10) of the 1976 Code, as added by Act 294 of 2004, is amended to read:

"(10) 'Luggage compartment' means the trunk of a motor vehicle which has a trunk; however, with respect to a motor vehicle which does not have a trunk, the term 'luggage compartment' refers to the area of the motor vehicle in which the manufacturer designed that luggage be carried or to the area of the motor vehicle in which luggage is customarily carried. In a station wagon, van, hatchback vehicle, truck, or sport utility vehicle, the term 'luggage compartment' refers to the area behind the rearmost seat."

#### **Time effective**

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

Ratified the 5<sup>th</sup> day of February, 2014.

Approved the 11<sup>th</sup> day of February, 2014.

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## SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)

Please review the following case law, which has been provided to use as a guideline for developing CWP instructor lesson plans. This case law pertains to civilian self-defense, defense of others, defense of property, and citizen's arrest. It is not intended to be all inclusive and should be more fully developed for use in lesson plans.

### THE LAW OF SELF DEFENSE IN SOUTH CAROLINA

State v. Fuller, 297 S.C. 440, 377 S.E.2d (1989). Fuller sets forth elements of self-defense in South Carolina as follows:

- (1) the defendant must be without fault in bringing on the difficulty;
- (2) the defendant must actually believe he is in imminent danger of loss of life or serious bodily injury or actually was in such danger;
- (3) if the defendant believed he was in such danger, a reasonable or prudent man of ordinary firmness and courage would have believed himself to be in such danger; if the defendant actually was in such danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life;
- (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

McAninch and Fairey identified a whole host of situations where the duty of retreat is not applicable. These include:

1. In addition to no duty to retreat in one's home, there is no duty to retreat within the home's curtilage. State v. Jackson, *supra* or beyond the curtilage. State v. Quick, 138 S.C. 147, 135, S.E. 800 (1926).
2. No duty to retreat in one's place of business even if the aggressor also has a right to be there. State v. Kennedy, 143 S.C. 318, 141, S.E. 559 (1928).

3. No duty to retreat if a guest in home of another unless required to leave by a householder. State v. Osborne, 202 S.C. 463, 25 S.E. 2d 492 (1942).
4. No duty to retreat where attacked in a person's club room. ["A man is no more bound to allow himself to be run out of his rest room than his workshop."]
5. Where both parties own the premises, neither has the duty to retreat where the other is the aggressor. State v. Gibbs, 113 S.C. 256, 102 S.E. 333 (1920).
6. Where both live in the same home, neither has the duty to retreat if the other is the aggressor. State v. Grantham, 224 S.C. 41, 77 S.E. 2d 291 (1953).
7. Where both are guests in the same home, neither has the duty to retreat if the other is the aggressor. State v. Smith, 226 S.C. 418, 85 S.E. 2d 409 (1955).
8. Where both are fellow workers on the same jobsite, neither has the duty to retreat if the other is the aggressor. State v. Gordon, 128 S.C. 422, 122 S.E. 501 (1924).
9. One need not retreat "if to do so would apparently increase his danger." State v. McGee, 185 S.C. 184, 190, 193 S.E. 303, 306 (1937).
10. Duty to retreat before using deadly force in self-defense on a public street or highway, even when in own automobile. State v. McGee, supra.
11. Duty to retreat in a store where public is invited. State v. Peeples, 126 S.C. 422, 120 S.E. 361 (1923).

### **DEFENSE OF OTHERS**

In State v. Hays, 121 S.C. 163, 168, 113 S.E. 362, 363 (1922), the Court approved a "defense of others" instruction. Such instruction was as follows:

"in such case the right to take the life of such assailant upon such unprovoked assault extends to any relative, friend, or bystander who would likewise have the right to take the life of such assailant if such act was necessary to save the person so wrongfully assailed from imminent danger of being murdered by such assailant. In other words, if the assailant makes a malicious and unprovoked assault with a deadly weapon upon one person with the apparent malicious intention to take the life of the person assailed and thereby commit murder, then, where the danger of the commission of such murder is imminent, any relative, friend, or bystander could have the right to take the life of such

assailant if necessary in order to prevent the commission of such murder, provided there was no other reasonable means of escape for the person so assailed, and provided both the person assailed and the person coming to his defense were without legal fault in bringing on the difficulty."

South Carolina has adopted the so called "alter ego" rule with respect to the defense of others. In State v. Cook, 78 S.C. 253, 59 S.E. 862 (1907), the court summarized:

[a] person who [intervenes on behalf of another] will not be allowed the benefit of the plea of self-defense, unless such plea would have been available to the person whose part he took in case he himself had done the killing since the person interfering is affected by the principle that the party bringing on the difficulty cannot take advantage of his own wrong.

In other words, the person intervening is deemed to "stand in the shoes" of the person on whose behalf he is intervening. If that individual "had the right to defend himself, then the intervening party is also protected by that right. If, however, the party had no right to use force...then the intervening party will also assume the liability of the person on whose behalf he interfered" (McAninch & Fairey, p. 494).

The "defense of others" rules apply to "any relative, friend or bystanders..." State v. Hays, supra. The same principles of retreat and withdrawal apply as if the individual himself were acting in self-defense rather than on behalf of someone else. If there was no duty to retreat by the person being assisted, there is no duty imposed upon the intervener.

### **RESISTANCE TO LAWFUL ARREST**

There is no right to resist a lawful arrest. Town of Springdale v. Butler, 299 S.C. 276, 384 S.E. 2d 697 (1989).

### **CITIZEN'S ARREST**

State v. Nall, 304 S.C. 332, 404 S.E. 2d (1991) represents a leading case in the area of citizen's arrest.

The Court summarized the common law of citizen's arrest as follows:

[u]nder the modern common law, any person who views a felony being committed has a duty to endeavor to arrest the felon either personally or by calling others to his aid or by seeking out an officer of the peace.

The law also permits a private person to arrest for a felony not committed in his presence if (1) the felony was actually committed and (2) the private person has reasonable cause to believe the one he is arresting committed the felony for which the arrest is made. Both

requirements must be met. If it later appears that the felony for which the arrest has been made was not in fact committed, the arrest is unlawful.

Finally, the law permits a private person to arrest for a misdemeanor committed in his presence, if it constitutes a breach of the peace. A private person has no lawful authority to arrest for misdemeanors not committed in his presence.

Except when made upon view of the felony, a private person making an arrest must give reasonable notice of his purpose to arrest and the cause for the arrest, together with a demand that the suspect submit to arrest.

### **DEFENSE OF PROPERTY**

State v. Hibler, 79 S.C. 170, 60 S.E. 438 (1907), the Court recognized that

[t]he general rule is too well settled to require the citation of authority that, in the protection of one's dwelling, only such force must be used as is necessary; or apparently necessary, to a reasonably prudent man. Any greater expenditure cannot be justifiable and is therefore punishable.

McAninch and Fairey pointed out that “[t]he weight of modern authority limits deadly force in defense of a dwelling to situations in which the householder reasonably believes that the intruder intends to commit a felony or only when deadly force would be authorized by the law of self-defense.”

