

The GrassRoots GunRights Analysis of H. 3292 with Proposed Amendments

Quick Summary:

H. 3292 is a bill intended to improve various gun laws in South Carolina. Among other things, H. 3292 *attempts* - with varying degrees of success - to:

- ✓ change South Carolina law to reflect Constitutional standards for possessing and carrying firearms (succeeds);
- ✓ set standards for keeping firearms in private vehicles (succeeds for some, fails for some);
- ✓ regulate the carrying of firearms into restaurants that serve alcoholic beverages by people who do not consume such beverages (succeeds, but should be improved);
- ✓ allow non-concealed weapon permit (CWP) holders to possess unloaded firearms in their vehicles on school grounds (fails);
- ✓ treat out of state CWP holders as we now treat out of state automobile drivers (succeeds);
- ✓ better balance the rights of gun owners with the rights of private property owners (succeeds);
- ✓ correct SC Attorney General McMaster opinion which allowed Oconee County - and any other local government - to violate the state firearms pre-emption law (fails); and
- ✓ improve various other CWP laws (mixed results).

H. 3292 is a well intentioned bill, but there are provisions that need to be improved in order to accomplish all that it seeks to accomplish. Also, there are additional changes to South Carolina gun laws that should be included in H. 3292 to make all portions of our law consistent with each other and with federal law, and to remove ambiguities and over broad catch-all provisions in our criminal laws.

H. 3292 has eleven (11) sections of interest to gun owners, which GrassRoots GunRights will analyze in their order. We will also suggest additional changes needed to improve H. 3292, and will propose amendments to fix the identified problem areas.

As always, the devil is in the details. Therefore, this analysis has to be very detailed. Please read the entire analysis, and then take action necessary to protect your rights.

1
2
3 **Section 1 of H. 3292**

4 Section 1 of H. 3292 - which adds a new Section 16-23-510 - is sloppily drafted. Proposed
5 Section 16-23-510(A) states “[e]xcept as provided in subsection (C)” but then fails to include a
6 “subsection (C)” in the bill. So, depending upon how H. 3292 is amended to either delete the
7 reference to subsection (C) or else to provide a subsection (C), this can be either a good change
8 or a bad change. GrassRoots GunRights will provide proposed language below to be used as
9 subsection (C) after first identifying why a subsection (C) is necessary to prevent a loss of
10 existing rights to carry.

11 Proposed Section 16-23-510 is essentially a restatement of existing law as found in present
12 Section 23-31-215(M), with a few important differences. While existing law found in Section
13 23-31-215(M) ***“does not authorize*** a permit holder to carry a concealable weapon into” the listed
14 locations, it also ***does not prohibit*** carry in the listed locations either. Thus, if a person with or
15 without a CWP was given permission to carry in one of the listed locations, then his carry would
16 be by that permission, not under his CWP, and would be legally permissible. H. 3292 should
17 continue the permission provision of existing law. Amending Section 1 of H. 3292 to add a
18 subsection (C) - the missing subsection (C) noted above - to continue allowing a person to carry
19 with permission is the best alternative to fixing this problem with proposed Section 16-23-510 of
20 H. 3292.

21
22 Proposed Section 16-23-510 deletes a “church or other established religious sanctuary unless
23 express permission is given by the appropriate church official or governing body;” a “daycare
24 facility or pre-school facility;” and a “hospital, medical clinic, doctor's office, or any other
25 facility where medical services or procedures are performed unless expressly authorized by the
26 employer” from the current list of locations where a CWP does not authorize carry. Thus, H.
27 3292 would remove the government intrusion into religious issues as contained in the current
28 law, and restore the right of private property owners and businesses to decide whether to allow
29 firearms on their premises.

30
31 **GrassRoots GunRights proposes the following language for the missing subsection (C):**

32
33 **(C) A person is exempt from the provisions of subsection (A) if permission**
34 **to carry a handgun has been given by someone with the apparent**
35 **authority to grant such permission.**
36

37 It is vitally important that a person who is given permission by someone with “apparent
38 authority” be protected in the event it later turns out that the person giving permission did not
39 have actual authority to do so. Here is why. Suppose you want to enter an otherwise prohibited
40 carry location, and you get permission from the person who appears to be in charge. However,
41 suppose it later turns out that the person who appeared to be in charge was not sufficiently high
42 enough up the management ladder at the location to grant such permission. Because you did not
43 get permission from the proper level of the management ladder, did you get legally acceptable
44 permission? If you are criminally charged you will have to hire a lawyer and hope a court agrees

1 that you acted in good faith. By modifying the proposed law to require permission “from
2 someone with the apparent authority to grant such permission” a law abiding person who acts in
3 good faith can avoid an expensive court battle and possible criminal conviction.
4

5 The penalties for violating this new section of law remain the same as those for violating the old
6 section of law.
7

8 9 Section 2 of H. 3292

10
11 Section 2 of H. 3292 - which adds a new Article 9 to Title 23, Chapter 31 - addresses the subject
12 of “Transportation and Storage of Firearms in a Locked Vehicle.” Providing a legal means to
13 possess firearms in one’s private vehicle is an extremely important issue to gun owners. But,
14 once again, the devil is in the details. H. 3292 should be amended to fix a couple of very serious
15 flaws in the drafting of this section.
16

17 As currently drafted, H. 3292 requires that a firearm or ammunition be out of sight and **locked**
18 **up**, something not required under present law. This sounds like a reasonable requirement at first,
19 but it takes away options that exist under present law, and will deny the protections of H. 3292 to
20 many gun owners whose vehicles do not have locking storage areas. Many people in our state
21 drive vehicles - such as SUVs, pickup trucks, hatchbacks, vans, and minivans - that do not have
22 a trunk, and that do not have a glove box or console that can be locked. They would be forced to
23 install a gun safe in their vehicles prior to getting any protections from this proposed law. Those
24 who rent or lease vehicles would be required to install a safe in a vehicle they do not own.
25

26 One solution that has been discussed, but which will not work, is to require the vehicle - but not
27 the compartment containing the gun - to be locked. But what is the legal status when a person is
28 exiting or entering their vehicle? Quite simply, can you exit or enter your vehicle while it is
29 **locked**? Of course not. Therefore, as soon as you unlock your vehicle’s door to exit or enter
30 your vehicle (if you have one of the many vehicles described above and have not installed a gun
31 safe), the firearm or ammunition is no longer **locked up** - and you are no longer in compliance
32 with the law. While this may seem to be a petty difference, it can be the difference between
33 obeying the law and not obeying the law. When a criminal charge or your job could hang on that
34 small difference, it becomes a huge difference.
35

36 **GrassRoots GunRights believes this problem can be resolved by removing the requirement**
37 **for a locked compartment, and substituting a requirement that the firearm or ammunition**
38 **be out of sight and the vehicle be either locked or attended.**
39

40 **The rights of gun owners and public safety can both be adequately protected by amending**
41 **H. 3292 with language similar to the GrassRoots GunRights proposed language that was**
42 **enacted into law in 2009 with regards to firearms on school grounds, i.e. *requiring that the***
43 ***vehicle be either locked or attended - not only locked* (See Sections 16-23-420 and 16-23-430).**
44 **Thus, all references to a “locked” vehicle need to be amended to refer to a “locked or**

1 **attended” vehicle.**
2

3 Another problem with this section of H. 3292 is that it places the burden upon the gun owner to
4 establish his protections conferred by H. 3292. Gun owners should not be forced to bear the
5 burden of going to court to get what the law provides. **Rather, H. 3292 needs to be amended
6 so as to declare any “law, regulation, policy or rule that prohibits, restricts, or has the
7 effect of prohibiting or restricting a person from transporting or storing a legally-possessed
8 firearm or legally-possessed ammunition is null and void on its face, and is unenforceable
9 as a matter of law.”**
10

11 Why is this important? If the law declares the “law, regulation, policy, or rule” null and void on
12 its face and unenforceable as a matter of law, then a law abiding gun owner does not have to bear
13 the burden and costs of first going to court to challenge the “law, regulation, policy, or rule”
14 before getting the protections already given to him by the law. Instead, the gun owner will be
15 protected immediately.
16

17 Making any “law, regulation, policy, or rule” null and void on its face and unenforceable as a
18 matter of law will protect the privacy rights of gun owners by removing the legal requirement
19 that the gun owner voluntarily identify himself as a gun owner when initiating a lawsuit to secure
20 the protections of H. 3292. This is especially important in an “at will” employment state like
21 SC, where an employer could simply terminate the employee for reasons allegedly unrelated to
22 the lawsuit to secure the protections of H. 3292.
23

24 Another reason to declare any “law, regulation, policy, or rule null and void on its face and
25 unenforceable as a matter of law” is to avoid a legal fight over what “legally-possessed” means.
26 H. 3292 does not give protection to an illegally possessed firearm or ammunition. H. 3292 also
27 requires a person to first go to court to have their rights secured. Thus, if a gun owner fails to
28 first go to court and have the court rule in the gun owner’s favor as H. 3292 currently requires,
29 any firearm or ammunition found in his vehicle could be considered as “illegally- possessed”
30 instead of “legally possessed.” And, H. 3292 gives no protection to “illegally- possessed”
31 firearms or ammunition. Thus, amending H. 3292 to make any “law, regulation, policy, or rule
32 null and void on its face and unenforceable as a matter of law” would ensure that the protections
33 of H. 3292 were in place as soon as the gun owner drove into the parking lot.
34
35

36 **Section 3 of H. 3292** 37

38 Section 3 of H. 3292 amends Section 16-23-20. Section 3 deletes the prohibition against the
39 possession of a handgun unless one fits into one of the listed exceptions. Instead, Section 3
40 makes "intent to use it unlawfully against another person" an element of the crime of illegally
41 possessing a handgun. GrassRoots GunRights believes there are many reasons a person might
42 possess a handgun, most of which are legal. GrassRoots GunRights believes that requiring
43 criminal intent is an extremely important change, and we support it both here and elsewhere in
44 H. 3292.

1 Section 4 of H. 3292

2
3 Section 4 of H. 3292 amends Section 16-23-420.

4
5 Section 4 would allow a person without a CWP to possess a firearm on school grounds if and
6 only if the firearm is both unloaded and stored in the vehicle as current law allows a CWP holder
7 to do. Unfortunately, **H. 3292 creates a legislative trap** for otherwise law abiding people who
8 follow this proposed amendment to SC law. The federal Gun Free School Zones law (see Title
9 18, Chapter 44, Section 922(q)(2)(B)(iii)) states that a person without a CWP can only possess a
10 firearm in their vehicle on school grounds if the firearm “is (I) not loaded; and (II) in a locked
11 container, or a locked firearms rack that is on a motor vehicle.” So, if a non-CWP holder was to
12 follow the new SC law exactly as written in H. 3292, he would still be committing a serious
13 crime, and facing up to a five year prison term plus a ban on possessing firearms for the rest of
14 his life. Law abiding gun owners should not be entrapped by South Carolina law that fails to
15 follow federal law.

16
17 Rather than repeating the provisions of federal law - which can and does change, South Carolina
18 should simply refer back to federal law as we already do in other sections of our gun laws. For
19 example, Section 23-31-215(M)(8) does not authorize a CWP holder to carry into a “place where
20 the carrying of firearms is prohibited by federal law.” **Simply requiring compliance with
21 federal law would eliminate the possibility of legislative entrapment of otherwise law
22 abiding gun owners, eliminate possible conflicts between state and federal law, and allow
23 South Carolina gun laws to be more easily read and understood.**

24
25 GrassRoots GunRights believes Section 16-23-420 should be further amended to remove the
26 requirement that CWP holders handle their guns when entering and exiting school grounds.
27 Leaving a gun in its holster and not handled is not only safer, but also avoids revealing the
28 location or even the existence of the firearm to children and others. This would be particularly
29 important in car pool situations, and in other circumstances where a CWP holder might not want
30 others to know they carry a self defense weapon.

31
32 The amendment to Section 16-23-420(F) is confusing. It would allow “a lessee of residential or
33 business premises within a public building, or anyone acting with the lessees authority, while in
34 or traveling to or from the premises” to possess a firearm. What does the phrase “with the
35 lessees authority” really mean? Does this phrase mean that a person must have the lessee’s
36 permission, or does it mean that a person must act as he would be authorized to act if he were the
37 lessee, that is, “standing in the shoes” of the lessee? The ambiguity would be removed if
38 “lessees” were changed to “lessee’s”, and "authority" to "permission".

39
40 But, even if the ambiguity is removed by making the above changes, the amendment to Section
41 16-23-420(F) would still fail to best protect public safety and the interests of law abiding gun
42 owners.

43
44 Even if the law is changed to require the “lessee’s” “permission”, public safety and the rights of

1 gun owners would be adversely affected by the requirement to first obtain the lessee's
2 permission - something not otherwise required when doing business with a private business.
3 Lessees would be hesitant to grant permission due to liability concerns. Granting permission
4 would be an affirmative act that could easily be interpreted by the courts as placing a liability
5 upon the lessee for the wrongful actions of any person granted permission - a liability that a
6 private business in a non-publicly owned building is not forced to assume.
7

8 GrassRoots GunRights believes the intent of the law is - or should be - to treat a private business
9 or residence located in a publicly owned building the same as a private business or residence not
10 located in a publicly owned building. GrassRoots GunRights would like to see Section 16-23-
11 420 clarified to be explicit as to what the law means, and not force law abiding gun owners to
12 pay lawyers and courts to find out what the law means.
13

14 **The biggest concern to gun owners is how the existing ban on carry into "publicly owned"**
15 **buildings could turn them into felons!** Often there is no way to determine whether a particular
16 building is "publicly owned" at the moment of entry. There are many private businesses and
17 residences in "publicly owned" buildings, and as foreclosures caused by the financial meltdown
18 continue, there will be even more.
19

20 For example, the SC Aquarium in Charleston is a privately-run business occupying a "publicly
21 owned" building. Nothing about the building tells you it is "publicly owned." The "publicly
22 owned" nature of the building can not be determined from the various brochures, informational
23 signs, or web site. One could ask an employee, but who knows how many of them know the
24 building's ownership? And, if an employee told you the building was privately owned, you
25 would still be in violation of the law even though you acted in good faith. Innocent gun owners
26 should not be at risk of committing a felony simply for not knowing who owned a building prior
27 to entering the building.
28

29 The changes to protect the "lessee" in H. 3292 do not protect innocent gun owners. While
30 repealing the "publicly owned building" prohibition would be the best alternative, amending
31 Section 16-23-420 to protect innocent gun owners from prosecution when acting in good faith is
32 the least we should accept. Therefore, GrassRoots GunRights proposes amending H. 3292 to
33 amend Section 16-23-420 to not only protect the lessee of a "publicly owned" building, but to
34 also improve public safety and protect gun owners that frequent a privately-run business or
35 private residence in a "publicly owned" building. The GrassRoots GunRights proposed
36 amendment is included below.
37

38 Current law makes it a felony to possess a firearm on property owned by a school or college,
39 even vacant farmland with no building of any kind on the property! An innocent hunter could
40 enter onto vacant rural property grown up in weeds that was left to a college in a will and never
41 know he was committing a felony by doing so. **GrassRoots GunRights believes the law**
42 **should be changed to protect an otherwise innocent gun owner from being turned into a**
43 **felon for such a harmless trespass. GrassRoots GunRights proposes an amendment below**
44 **to protect innocent gun owners.**

1 Another problem that can turn a law abiding gun owner into a felon arises when a CWP holder is
2 strolling around in a city that also is home to a college or university. As he strolls around
3 Columbia, Charleston, or Clemson, how can he know whether the sidewalk adjoining the street
4 he is walking down is part of the right-of-way or not? If it is, then he is within the protections of
5 the law. But, if the right of way does not include the sidewalk, he is committing a felony. Law
6 abiding gun owners should not be subject to such uncertainties. **GrassRoots GunRights**
7 **proposes improving H. 3292 by amending Section 16-23-420(E) to protect otherwise law**
8 **abiding gun owners when they are walking on a sidewalk next to a street or road already**
9 **exempted in the present law.**

10
11 Section 4 extends the right to possess a firearm at an interstate highway rest area to persons
12 without a CWP. Prior to H. 3292, only CWP holders could do so.

13
14 Section 16-23-420 protects gun owners from prosecution if the firearm is properly stored in a
15 vehicle on a road open “full time” to vehicular traffic. But, how is a person to know that a road
16 is not open “full time” to vehicular traffic, especially when the road is always open when they
17 use the road? Is a road open “full time” to vehicular traffic if it is occasionally closed for
18 parades, special events, football games, fairs, etc., etc.? **The law needs to be changed to**
19 **protect law abiding gun owners. If the road is open at the time the gun owner drives on it,**
20 **then it should be legal to possess the firearm. GrassRoots GunRights proposes an**
21 **amendment below to fix this problem by deleting the words “full time” from Section 16-23-**
22 **420(E).**

23
24 **In order to resolve the many problems identified above, GrassRoots GunRights proposes**
25 **amending H. 3292 to amend Section 16-23-420 to read as follows:**

26
27 **SECTION 16-23-420. Possession of firearm on school property; concealed**
28 **weapons.**

29
30 **(A) It is unlawful for a person to possess a firearm of any kind**

31
32 **1) on any premises or property he knows to be owned, operated, or**
33 **controlled by a private or public school, college, university, technical**
34 **college, or other post-secondary institution, or in any publicly owned**
35 **building, without the express permission of the authorities in charge**
36 **of the premises or property, in a manner that violates federal law; or**

37
38 **2) in any building he knows to be publicly owned building, without the**
39 **express permission of the authorities in charge of the premises or**
40 **property.**

41
42 **~~The provisions of this subsection related to any premises or property owned,~~**
43 **~~operated, or controlled by a private or public school, college, university,~~**
44 **~~technical college, or other post-secondary institution, do not apply to a~~**

1 ~~person who is authorized to carry a concealed weapon pursuant to Article 4,~~
2 ~~Chapter 31, Title 23 when the weapon remains inside an attended or locked~~
3 ~~motor vehicle and is secured in a closed glove compartment, closed console,~~
4 ~~closed trunk, or in a closed container secured by an integral fastener and~~
5 ~~transported in the luggage compartment of the vehicle.~~

6
7 (B) It is unlawful for a person to enter the premises or property described in
8 subsection (A) and to display, brandish, or threaten others with a firearm.

9
10 (C) A person who violates the provisions of this section is guilty of a felony
11 and, upon conviction, must be fined not more than five thousand dollars or
12 imprisoned not more than five years, or both.

13
14 (D) This section does not apply to a guard, law enforcement officer, or
15 member of the armed forces, or student of military science. A married
16 student residing in an apartment provided by the private or public school
17 whose presence with a weapon in or around a particular building is
18 authorized by persons legally responsible for the security of the buildings is
19 also exempted from the provisions of this section.

20
21 (E) For purposes of this section, the terms "premises" and "property" do not
22 include state or locally owned or maintained roads, streets, adjoining
23 sidewalks, or rights-of-way of them, running through or adjacent to premises
24 or property owned, operated, or controlled by a private or public school,
25 college, university, technical college, or other post-secondary institution,
26 which are open full-time to the public vehicular traffic.

27
28 (F) This section does not apply to ~~a person who is authorized to carry~~
29 ~~concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon~~
30 ~~any premises, property, or building that is part of an interstate highway rest~~
31 ~~area facility.~~

32
33 (G) This section does not apply to any portion of the property or premises
34 listed in subsection (A) which is leased to or rented to or otherwise occupied
35 by an individual or privately run business, or to reasonable ingress and
36 egress to such leased or rented property or premises. Such leased or rented
37 property or premises, and reasonable ingress and egress, shall be treated as
38 private property when determining if a weapons violation has occurred.

39
40
41 Section 5 of H. 3292

42
43 Section 5 of H. 3292 amends Section 16-23-430.

1 Section 5 would allow a person without a CWP to possess a firearm on school grounds if and
2 only if the firearm is both unloaded and stored in the vehicle as current law allows a CWP holder
3 to do. Thus, the proposed changes in H. 3292 would create the same legislative entrapment
4 problems with regards to federal law as identified in Section 4 above, and would subject
5 otherwise law abiding South Carolina citizens to a five year prison sentence and a lifetime ban
6 on possessing any firearms.
7

8 Another problem is how to interpret the words “on his person.” Some would interpret “on his
9 person” to mean “if the person can reach it.” Using that interpretation, under Section 16-23-430,
10 if there is any object that could be used as a weapon within reach of the occupant of a vehicle,
11 then it is legally “on his person.” Thus, a filet knife in a tackle box in the cab of a pick-up truck
12 or a baseball bat on the passenger’s seat could be considered “on his person.” The sponsors of
13 H. 3292 should want to fix this problem before someone is forced to defend themselves in court.
14

15 Section 16-23-430(A) also contains an over broad catch-all provision covering not only things
16 like knives and firearms, but also "any other type of weapon, device, or object which may be
17 used to inflict bodily injury or death." But, Section 16-23-430(A) lacks any requirement of
18 criminal intent. Under this language in the current law, carrying a baseball bat to an athletic
19 field could be treated as a felony. The changes, as GrassRoots GunRights proposes them, would
20 distinguish weapons such as knives and firearms from objects like baseball bats that are often
21 carried at school without criminal intent.
22

23 Chain saws and baseball bats can be used as deadly weapons, as some gangster movies will
24 readily prove. Or, they can be used as life saving tools or sports accessories, as some family fare
25 movies demonstrate. It is the intent of the user that is of utmost importance. Inanimate objects
26 are neither good nor bad. The law should reflect something this important.
27

28 GrassRoots GunRights believes over broad catch-all provisions that ignore criminal intent make
29 bad law. GrassRoots believes it is wrong to make possession of a baseball bat or chain saw a
30 crime unless such items are possessed with the intent to use them in a crime. And, the innocent
31 possession of these items should be legally allowed in the passenger compartments of vehicles.
32 Thus, a baseball bat thrown on the passenger seat by a kid rushing to school should not be a
33 crime. A chain saw stored on the floor of the passenger compartment of a pickup truck to be
34 used after school should not be a crime, either. And, possession of a fishing knife in a tackle box
35 as mentioned above should not be a felony.
36

37 **In order to resolve the problems identified above with legislative entrapment of otherwise**
38 **law abiding gun owners and over broad catch-all provisions, GrassRoots GunRights**
39 **proposes that H. 3292 be amended to amend Section 16-23-430 to read as follows:**
40

- 41 **(A) It shall be unlawful for any person, except state, county, or municipal**
42 **law enforcement officers or personnel authorized by school officials, to carry**
43 **on his person, while on any elementary or secondary school property**
44 **(1) a knife with a blade over two inches long except when the knife**

1 remains inside an attended or locked motor vehicle and is secured in a
2 closed glove compartment, closed console, closed trunk, or in a closed
3 container secured by an integral fastener;
4 (2) a firearm in violation of federal law; or
5 (3) any other type of weapon, device, or object which may be used to
6 inflict bodily injury or death with the intent to use the weapon, device,
7 or object in furtherance of a crime.
8

9 **(B) A person who violates the provisions of this section is guilty of a**
10 **felony and, upon conviction, must be fined not more than one thousand**
11 **dollars or imprisoned not more than five years, or both. Any weapon or**
12 **object used in violation of this section may be confiscated by the law**
13 **enforcement division making the arrest.**
14

15 Section 6 of H. 3292

16 Section 6 of H. 3292 amends Section 16-23-460.
17

18 Section 16-23-460 currently prohibits the carrying of a concealed “deadly weapon” without any
19 requirement of criminal intent. H. 3292 would amend the law to allow the carrying of concealed
20 deadly weapons unless done “with the intent to use the weapon in furtherance of a crime.” H.
21 3292 protects gun owners by specifically stating: “The intent to use a weapon in furtherance of a
22 crime shall not be inferred by the mere possession, carrying, or concealment of the weapon,
23 including the possession, carrying or concealment of a loaded or unloaded firearm.” GrassRoots
24 GunRights supports this change.
25
26
27

28 Section 7 of H. 3292

29 Section 7 of H. 3292 amends Section 16-23-465.
30

31 Section 16-23-465 is currently interpreted by those in power to prohibit the possession of
32 firearms in any business that sells alcoholic beverages for on premises consumption. The
33 penalty is a misdemeanor, with a possible three year jail term that would cause a lifetime federal
34 firearms disability. A person who has ever been convicted under this section, no matter how
35 long ago and no matter the circumstances, would be prohibited from ever possessing any firearm
36 for the rest of his life.
37
38

39 H. 3292 as proposed would allow the carrying of firearms in businesses that sell alcoholic
40 beverages for on premises consumption. But, H. 3292 would make it a crime to 1) consume an
41 alcoholic beverage while armed in the business, 2) enter the business if it is “conspicuously
42 posted in accordance with Section 23-31-220,” or 3) “[refuse] to leave or to remove the firearm
43 from the premises when asked to do so by a person legally in control of the premises.” The new
44

1 penalty would be a misdemeanor. Upon conviction, a person “must be fined not more than two
2 thousand dollars or imprisoned not more than two years, or both.” The new penalty would no
3 longer result in a lifetime federal firearms disability, which is an improvement over the existing
4 law.

5
6 While the proposed amendment to Section 16-23-465 contained in H. 3292 would be an
7 improvement over existing law, it should do more.

8
9 Seventy-five percent (75%) of the people living in the United States are already governed by
10 laws that allow them to consume alcoholic beverages while armed. There have been no
11 problems in other states with gun owners getting drunk and shooting innocent people. Gun
12 owners in South Carolina are just as responsible as gun owners in the rest of the United States.
13 There is no compelling reason for South Carolina gun owners to be treated differently than gun
14 owners in other states.

15
16 Perhaps the most important objection to banning firearms in businesses that sell alcoholic
17 beverages for on premises consumption is that this law creates more so-called "gun free zones."
18 But, “gun free zones” only disarm law abiding people, not the criminals. Criminals are attracted
19 to “gun free zones” because they can find unarmed victims. Criminals know that law abiding
20 people eating in a nice restaurant will be unarmed thanks to our legislators, and therefore easy
21 victims of criminal attack.

22
23 **GrassRoots GunRights believes public safety is best served by amending H. 3292 to remove**
24 **the “gun free zone” created in H. 3292 by deleting the prohibition against consumption of**
25 **alcoholic beverages while armed.**

26
27
28 **Section 8 of H. 3292**

29
30 Section 8 of H. 3292 amends Section 23-31-215, which is the heart of South Carolina’s CWP
31 law.

32
33 A South Carolina CWP is important not only because it allows residents and qualified non-
34 residents to carry here under a permit, but also because it allows SC residents to carry in other
35 states that require a permit from the person's home state, because it provides compliance with
36 federal law regarding school grounds, and because it satisfies the requirements of the NICS
37 background check system for gun buyers. Thus, it is important that the SC CWP program be
38 maintained.

39
40 Section 8 of H. 3292 removes the requirement that a CWP holder have his CWP on his person
41 when carrying a concealable weapon, removes the requirement to identify one’s self as a CWP
42 holder to law enforcement officers, removes the requirement to notify SLED of a lost CWP, and
43 removes the penalties associated with the aforementioned changes.
44

1 Section 8 of H. 3292 deletes the old list of *unauthorized* CWP carry locations now contained in
2 Section 23-31-215(M) and replaces it in Section 1 of H. 3292 with a revised list of *prohibited*
3 CWP carry locations. The difference between "unauthorized" and "prohibited" is important for
4 the reasons spelled out in our analysis of Section 1 above. Please reread the above analysis of
5 Section 1 to understand the significance of this change.
6

7 **Section 8 continues to cite previously repealed Section 50-9-830 as controlling law in the**
8 **amended Section 23-31-215(M), and should be amended to delete reference to this already**
9 **repealed section.**

10
11 The words “unless specifically provided in the section” have been added to Section 23-31-
12 215(M) and should have absolutely no effect in the context of H. 3292. But, those words could
13 do much harm if included in a different context of the law. So, it is important that we keep a
14 close eye on how the law is being amended to ensure that seemingly harmless language in one
15 context is not inserted into the law in a different context where it could do harm.
16

17 Section 8 requires South Carolina to honor out-of-state permits, just as we now honor out-of-
18 state drivers' licenses. Section 8 changes South Carolina from a CWP reciprocity state into a
19 CWP recognition state. CWP reciprocity requires two states to sign a reciprocity agreement in
20 order to allow residents of each state to carry in the other state. CWP recognition is when one
21 state honors the CWPs of other states without need of an agreement between the states. CWP
22 recognition treats an out-of-state CWP just like an out-of-state driver's license. Other states
23 have already enacted similar laws recognizing our permits, which is why SC CWP holders can
24 carry in as many states as we do now. With this change in H. 3292, SC CWP holders will be
25 able to carry in more than 30 states.
26

27 One provision of the proposed change to Section 23-31-215(N) could harm the interests of SC
28 CWP holders because it deletes the requirement that SLED “maintain and publish a list of those
29 states as the states with which South Carolina has reciprocity.” This is important because some
30 states require reciprocity in order for South Carolina permit holders to carry there. Without a
31 mandate to maintain and publish a list of states with which SC has CWP reciprocity, then SLED
32 might well refuse to do so - especially considering the budget constraints that all state agencies
33 are facing. If that were to happen, then SC CWP holders would be unable to carry in those states
34 requiring reciprocity even while holders of permits from those states could carry here. **Thus, H.**
35 **3292 needs to be amended to mandate that SLED enter into reciprocal CWP agreements**
36 **and also that SLED maintain and publish a list of reciprocal states.**
37

38 Section 8 of H. 3292 amends Section 23-31-215(Q) to delete the requirement of a “favorable”
39 background check for *renewing* a CWP and replaces it with a requirement that the background
40 check “reveals no information which would be disqualifying under the provisions of this
41 section.” This change is long overdue for two reasons. First, current law requires an applicant to
42 prove a negative. Criminal background checks never prove a person is NOT a criminal, but only
43 show entries of criminal activity. Second, SLED has, in the past, been arbitrary in their
44 interpretation of a “favorable” background check. This change would fix both problems.

1 Unfortunately, H. 3292 fails to make this same change for the initial CWP application - which
2 allows SLED to continue to unfairly deny people legally allowed to possess a handgun from
3 carrying that very same handgun under a CWP license. The same standard should apply to a
4 background check for a new application as for a renewal. If a person can legally possess a
5 firearm, then that person should be able to carry that firearm - that is the very meaning of the
6 “right to keep and bear arms.”
7

8 **GrassRoots GunRights proposes that H. 3292 be further amended to amend Section 23-31-**
9 **215(B) - which deals with initial CWP applications - to extend to initial CWP applicants the**
10 **same standard of approval that renewal CWP applicants are getting in Section 8.**
11

12 **GrassRoots GunRights also proposes changing the age at which a person can obtain a**
13 **CWP from 21 to 18 in order to remove the unconstitutional discrimination against 18 to 20**
14 **year old adults.** The SC Supreme Court already ruled it is unconstitutional to discriminate
15 against 18-20 year old adults with regards to possessing handguns. It is wrong to force these
16 young adults to bear the costs of going to court to secure their rights, especially when doing so is
17 so clearly unconstitutional.
18
19

20 Section 9 of H. 3292

21
22 Section 9 of H. 3292 amends Section 23-31-220, which is the law dealing with posting against
23 concealable weapons.
24

25 Section 23-31-220(1) is intended to allow "a public or private employer" to prohibit carry by its
26 employees. But, this section is so poorly worded as to raise the question of whether an employer
27 can regulate conduct of those not its employees simply because it employs others. It has even
28 been used in a recent SC AG opinion to allow a public entity to ban park visitors from carrying
29 in public parks, which is otherwise allowed - and preempted - by state law. See Section 23-31-
30 510(1).
31

32 The amendments to Section 23-31-220 in H. 3292 will not stop local governments from trying to
33 stop CWP carry on public property as outlined in the AG McMaster opinion upholding Oconee
34 County’s prohibition against CWP carry on public property, which was detailed in the last issue
35 of *The Defender*. The “significant” amendment in H. 3292 is found in Section 23-31-220(2), but
36 the AG McMaster opinion “justifies” the power of local government to ban CWP carry on public
37 property based upon Section 23-31-220(1). **Thus, Section 9 of H. 3292 - in order to**
38 **accomplish its goal - must amend Section 23-31-220(1) to replace the word “person” with**
39 **the word “employee” in the appropriate places.**
40

41 **In order to properly overrule the Oconee County AG McMaster opinion, GrassRoots**
42 **GunRights proposes that Section 9 of H. 3292 be replaced with the following language:**
43

44 **Section 23-31-220. Nothing contained in this article shall in any way be**

1 construed to limit, diminish, or otherwise infringe upon:

2 (1) the right of a public or private employer to prohibit a person
3 an employee, including an employee who is licensed under this article, from
4 carrying a concealable weapon upon the premises of the business or work
5 place or while using any machinery, vehicle, or equipment owned or
6 operated by the business;

7 (2) the right of a private property owner or person in legal
8 possession or control of private property to allow or prohibit the carrying of
9 a concealable weapon including a person who possesses a concealable weapon
10 permit, upon his premises.

11 The posting by the employer, owner, or person in legal possession or
12 control of a sign stating ‘No Concealable Weapons Allowed’ shall constitute
13 notice to a person, including a person holding a permit issued pursuant to
14 this article, that the employer, owner, or person in legal possession or control
15 requests that concealable weapons not be brought upon the premises or into
16 the work place. A person who brings a concealable weapon onto the
17 premises or work place in violation of the provisions of this paragraph may
18 be charged with a violation of Section 16-11-620. In addition to the penalties
19 provided in Section 16-11-620, a person convicted of a second or subsequent
20 violation of the provisions of this paragraph must have his any permit issued
21 to him pursuant to this article revoked for a period of one year. The
22 prohibition contained in this section does not apply to persons specified in
23 Section 16-23-20, item (1) peace officers engaged in the lawful performance
24 of their official duties.

25
26 Section 9 of H. 3292 does something very admirable - it deletes the double standard used to
27 separate the people from public servants. Off duty law enforcement officers would be subject to
28 the same “No Concealable Weapons” signs as the rest of the people. This is a good change, and
29 should be extended to more than just this section of law.
30

31 32 Section 10 of H. 3292

33
34 Section 10 of H. 3292 amends Section 23-31-225, which currently requires that a person obtain
35 the “express permission of the owner or person in legal control or possession” of a residence
36 prior to carrying a concealable weapon into the residence of another. This means a permit holder
37 must disclose they are armed, and subject themselves to being told to disarm. Real estate agents,
38 pizza delivery drivers, women on dates, service people and others who enter residences are
39 effectively prevented from keeping their personal defense weapons with them. H. 3292 would
40 ban carrying in the residence of another if asked not to do so by the owner or person in legal
41 control or possession. This proposed change strikes a fair balance between the interests of
42 property owners and of gun owners. GrassRoots GunRights supports this change.
43
44

Section 11 of H. 3292

Section 11 of H. 3292 provides that any pending criminal or civil actions are not affected by H. 3292, which means that someone can be convicted years from now for something that is no longer a crime. GrassRoots GunRights believes that the gun control laws under consideration are unconstitutional, and should never have been enacted or enforced in the first place. **Thus, GrassRoots GunRights would like to see H. 3292 amended to make H. 3292 controlling over all pending criminal actions, which might well save some gun owner from being convicted in the future of something that should never have been a crime in the first place.**