

The State of South Carolina



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May 20, 1986

J. P. Strom, Chief
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Dear Chief Strom:

In a letter to this Office you referenced the recent action by the U.S. House of Representatives amending the 1968 Gun Control Act, 18 U.S.C. § 921 et seq., and particularly questioned the effect of the amendments on State gun laws. Such State provisions are found in Sections 16-23-10 et seq. and 23-31-10 et seq. of the 1976 Code of Laws. The referenced action by the House was noted in a newspaper article which you enclosed with your request. I also obtained a copy of the Congressional Record dated April 10, 1986 which includes the House-passed legislation. Therefore, for purposes of your request, the comments set forth in this letter should be construed as only being applicable to the House-passed legislation. Also, inasmuch as your questions concern pending legislation, instead of providing a line-by-line review of such, I offer the following general comments on how such legislation would impact on State gun laws.

An original provision of the 1968 Gun Control Act, 18 U.S.C. § 927, states:

(n)o provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

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In Thrall v. Wolfe, 503 F.2d 313 (7th Cir., 1974) it was stated that the purpose of such provision was to avoid the claim of preemption of state laws. See also: Carfield v. State, 649 P.2d 865 (Wyoming, 1982). Referencing the above provision which apparently has not been amended by the House-passed legislation, it is clear that provisions of this State's laws dealing with weapons noted above remain effective unless such are in direct conflict with federal provisions and cannot be reconciled.

The House-passed legislation amends several provisions of the 1968 act. Amendments are made to the definitions section of the act, provisions dealing with the federal regulation of the sale, transfer, shipping, or delivering of firearms and ammunition, provisions dealing with federal licensing of firearm and ammunition dealers, manufacturers, or importers, provisions setting forth the penalties for violating the federal act, provisions dealing with exceptions to the federal act, and provisions dealing with the authority for the promulgation of rules and regulations by the Secretary of the Treasury. Based upon by brief review of the legislation, I do not construe such as affecting this State's gun laws. The provision which possibly could impact on this State would be the new section 926 which as passed by the House states:

any person not prohibited by this chapter from transporting, shipping or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation prescribed by any State or political subdivision thereof.

Pursuant to 18 U.S.C. § 921 (2) "interstate commerce" is defined as

... commerce between any place in a State and any place outside of that State ... but such term does not include commerce between places within the same State but through any place outside of that State....

Section 16-23-20 of the Code states that in part that it is unlawful for anyone to carry about the person a pistol except:

(a)ny person in any vehicle where the pistol is secured in a closed glove compartment or closed trunk.

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Pursuant to proposed section 926, an individual could transport a firearm through this State in interstate commerce consistent with the section's provisions, i.e., unloaded and not readily accessible. However, such provision would not apply to pistols carried solely within this State which, again, would have to be transported consistent with Section 16-23-20 (9):

If there is anything further, please advise.

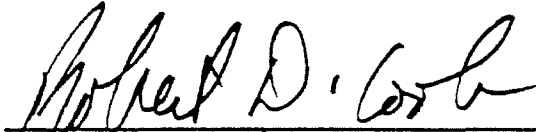
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:hcs

REVIEWED AND APPROVED BY:



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