GrassRoots GunRights

P.O. Box 2446
Lexington, SC 29071

February 24, 2009

The Honorable Daniel T. "Dan" Cooper,
SC House of Representatives
Post Office Box 11867
Columbia, SC 29211

RE: H. 3003

Dear Representative Cooper,

GrassRoots GunRights supports the concept of open carry as found in H. 3003. But, H. 3003 has serious flaws that make H. 3003 worse than existing law in several ways. H. 3003 needs to be amended to fix these flaws before GrassRoots GunRights can support it.

As currently drafted, H. 3003 will revoke the privilege of:

- **in vehicle concealed carry for concealed weapon permit (CWP) holders;**
- **concealed carry for business owners, employees, and managers while at a fixed place of business; and**
- **any form of carry for business owners and managers of businesses that serve alcoholic beverages for on premises consumption.**

All of the above are currently allowed under existing law. Thus, H. 3003 is a step backwards for many people. GrassRoots GunRights needs to have these problems resolved before we can support H. 3003.

A full analysis detailing all of the problems identified in H. 3003 can be found in the GrassRoots GunRights Analysis of H. 3003, which is both attached for your review and available on our web site www.SCFirearms.org. GrassRoots GunRights has also provided solutions to fix all of the identified problems.

GrassRoots GunRights requests that you please take action at the House Judiciary General Laws subcommittee hearing scheduled for Wednesday, February 25, 2009, to amend H. 3003 to include all of the GrassRoots GunRights proposed amendments.

If you have any questions regarding the GrassRoots GunRights Analysis of H. 3003, please contact me at (803) XXX-XXXX or VP@SCFirearms.org.

Sincerely,

Robert D. Butler, J.D.
VP, GrassRoots GunRights

GrassRoots GunRights Analysis of H. 3003

As currently drafted, H. 3003 is a compromise bill that forces gun owners to give up something (i.e., in vehicle concealed carry for CWP holders; concealed carry for business owners, employees, and managers; and any kind of carry for business owners and managers of businesses that serve alcoholic beverages for on premises consumption) in order to get something (i.e., open carry). The following analysis explains in detail what H. 3003 does, and how H. 3003 can be fixed so that gun owners are not forced to give away existing privileges in order to gain other privileges.

H. 3003 deletes Section 16-23-20, which is the statute that makes possession of a handgun illegal unless a person fits into one of the listed exceptions. Thus, it would become legal to carry a handgun - whether openly or concealed - unless some other law prohibited doing so.

Unfortunately, Section 16-23-460 continues to make it a crime to carry "a deadly weapon usually used for the infliction of personal injury concealed about his person." For the vast majority of people it would be factually correct to state that one's handgun was "usually used" for target practice. In fact, it is likely that virtually all handguns have never been "used for the infliction of personal injury." Therefore, Section 16-23-460 should not apply to any handgun unless it could be proven the handgun in question was "usually used for the infliction of personal injury" as the statute requires. But, it is unlikely a court or jury would agree. Thus, concealed carry of a handgun will most likely only be allowed pursuant to the Law Abiding Citizen's Self Defense Act of 1996 or some other law specifically allowing such. But, open carry of a handgun should become legal if H. 3003 is enacted into law.

H. 3003 moves most of the exceptions to the prohibition on possessing a handgun found in existing Section 16-23-20 to Section 23-31-215(O), which is part of the concealed weapon permit (CWP) law. Any person who fits into one of the exceptions moved into Section 23-31-215(O) from Section 16-23-20 will still be allowed to possess a handgun - either openly or concealed - without being required to possess a CWP. But, if a person not possessing a CWP fails to fit into one of the exceptions found in Section 23-31-215(O), then only open carry would be allowed - unless another law specifically provided for concealed carry of the handgun (i.e., Section 23-31-230: "Notwithstanding any provision of law, any person may carry a concealable weapon from an automobile or other motorized conveyance to a room or other accommodation he has rented and upon which an accommodations tax has been paid.").

Before going any further, it is important to understand how the courts interpret the law. One of the rules of statutory construction (interpreting the law) states that every word of a statute must be given meaning if at all possible. Thus, if the court has to choose between two opposing interpretations of a statute where one interpretation gives meaning to every word of the statute and the other interpretation would make some of the words of the statute redundant, superfluous, or meaningless; then the court will choose the interpretation that gives meaning to every word of the statute as the one intended by the legislature. To do anything else could allow the court to engage in writing the law instead of interpreting the law. Understanding this rule of statutory construction is necessary to understanding the GrassRoots GunRights analysis of H. 3003.

Not every exception in existing Section 16-23-20 was moved into Section 23-31-215(O). Lets examine what was not moved and the significance of the failure to move it.

1. H. 3003 fails to move Section 16-23-20(9) in its entirety. H. 3003 fails to move "a person in a vehicle if the handgun is: ... (b) concealed on or about his person, and he has a valid concealed weapons

permit pursuant to the provisions of Article 4, Chapter 31, Title 23" into Section 23-31-215(O). This language was enacted into law in 2007 in an effort to stop law enforcement officers from harassing CWP holders. This failure to move all of Section 16-23-20(9) creates a huge problem for CWP holders.

Since 1996, there have been many complaints from CWP holders of law enforcement officers not knowing the law and essentially harassing CWP holders for legally carrying in a vehicle. One example stands out, although there are many others.

The GrassRoots VP was pulled over for a burned out headlight in his wife's minivan while on the way to a Christmas play with his wife and two young daughters. The GrassRoots VP informed the Highway Patrol officer - as required by law - that he had a CWP. The Highway Patrol officer immediately started acting as if the GrassRoots VP was public enemy #1. The fully cooperative and polite GrassRoots VP was forced to stand spreadeagled with his hands against his vehicle for twenty minutes while his wife and two daughters watched in disbelief from inside the vehicle. The Highway Patrol officer somehow felt he had to obtain backup to control a non confrontational handicapped man, his wife, and two young daughters who had been on their way to a Christmas play when pulled over for a burned out headlight. The Highway Patrol officer was ignorant of the law and had to verify from the back up officer that no law had been broken merely because as a CWP holder the GrassRoots VP was carrying a concealed handgun in a vehicle.

Due to many similar complaints of law enforcement officers harassing CWP holders for carrying a self defense sidearm while in a vehicle, the General Assembly considered passing additional legislation in 2007 specifically stating a CWP holder could carry while in a vehicle. GrassRoots stated there was no need to pass an additional law to specifically state what was already allowed by the existing law, there was only a need to better train law enforcement officers regarding the existing law. GrassRoots pointed out a South Carolina Attorney General opinion already existed that agreed existing law already allowed a CWP holder to legally carry in a vehicle.

But, legislators believed they needed to enact a law that made it explicit that CWP holders could legally carry while in a vehicle since too many law enforcement officers were not obeying the law or following the direction in the Attorney General opinion. Legislators felt they needed to do something to try to stop the harassment of CWP holders by law enforcement officers. So, Section 16-23-20(9)(b) was enacted into law. Unfortunately, passage of Section 16-23-20(9)(b) forces the courts to interpret Section 16-23-20(9)(a) as not allowing CWP holders to carry in a vehicle since to hold otherwise would be to make the words of Section 16-23-20(9)(b) meaningless.
Failure to move Section 16-23-20(9)(b) into Section 23-31-215(O) will allow law enforcement officers to arrest CWP holders for carrying in a vehicle. The courts will rule the legislature's failure to move Section 16-23-20(9)(b) into Section 23-31-215(O) is proof the legislature has decided to no longer allow CWP carry in a vehicle. **Thus, Section 16-23-20(9)(b) needs to be moved into Section 23-31-215(O) to protect the privilege of CWP holders to carry concealed in a vehicle.**

2. H. 3003 fails to move Section 16-23-20(13), which allows either open or concealed carry of a handgun by "the owner or the person in legal possession or the person in legal control of a fixed place of business, while at the fixed place of business, and the employee of a fixed place of business, other than a business subject to Section 16-23-465, while at the place of business; however, the employee may exercise this privilege only after: (a) acquiring a permit pursuant to item (12), and (b) obtaining the permission of the owner or person in legal control or legal possession of the premises." Thus, only open carry would be allowed by business owners and their employees, not concealed carry. Many business owners would prefer discreet concealed carry in front of their customers instead of open carry. But,

failure to move Section 16-23-20(13) denies business owners the privilege of discreet concealed carry - even though business owners are currently allowed to do so - unless the business owner first obtains a CWP.

Another problem with the failure to move Section 16-23-20(13) into Section 23-31-215(O) is that owners and managers of restaurants that serve alcoholic beverages would no longer be allowed to possess any handguns in their businesses whether carried openly or concealed. It is the exception found in Section 16-23-20(13) that allows business owners and managers to carry in restaurants that serve alcoholic beverages in spite of Section 16-23-465, and the current interpretation of Section 16-23-465 prohibits CWP carry in such restaurants. Thus, the only people who would ever possess a handgun in a restaurant that served alcoholic beverages would be visiting law enforcement officers and criminals.

Now, one could argue that Section 16-23-20(8) - which was moved into Section 23-31-215(O) - would control businesses just like it controls homes and real property. But, such an argument would fail. The courts would find the General Assembly has historically drawn a distinction between homes and real property found in Section 16-23-20(8) versus businesses and business property found in Section 16-23-20(13). To suddenly claim Section 16-23-20(8) includes Section 16-23-20(13) would violate the rule of statutory construction requiring every word be given meaning since such an interpretation would require that Section 16-23-20(13) be deemed to have been superfluous wording. The courts will not do such a thing. Rather, the courts will hold that the failure to move Section 16-23-20(13) was intentionally done to restrict the carry privileges of business owners.

In order to maintain the existing privileges for business owners, employees, and managers found in Section 16-23-20(8), the following language from Section 16-23-20(8) needs to be moved into Section 23-31-215(O) as two separate exceptions:

> **1. "the owner, the person in legal possession, or the person in legal control of a fixed place of business, while at the fixed place of business," and**
>
> **2. "the employee of a fixed place of business, other than a business subject to Section 16-23-465, while at the place of business."**

The above edited portion of Section 16-23-20(8) needs to be moved into Section 23-31-215(O) to both protect the privilege of business owners and employees to carry concealed in their businesses, and to protect the privilege of owners and managers of businesses that serve alcoholic beverages to carry in such businesses.

3. H. 3003 fails to move Section 16-23-20(12). Years ago, GrassRoots fought to close a loophole in the law that would allow a CWP holder to be prosecuted for not having his weapon concealed while he was transferring his self defense sidearm between his person and his vehicle when forced to disarm to enter a prohibited carry location. Section 16-23-20(12) contains that hard fought protection.

As currently drafted, H. 3003 does not need to contain Section 16-23-20(12) to protect CWP holders who are forced to disarm to enter a prohibited carry location since open carry would be legal - even in vehicles. But, there is a very good chance law enforcement will oppose open carry in vehicles. **If H. 3003 gets amended to prohibit open carry in vehicles, then Section 16-23-20(12) will need to get moved into Section 23-31-215(O) to protect CWP holders from being prosecuted for simply disarming to enter a prohibited carry location.**

H. 3003 also amends Section 16-23-460 to increase penalties for possession of a concealed weapon. Since virtually all weapons other than handguns are excluded from the law, the penalties of this law essentially apply only to handguns. The penalty will be increased from forfeiture of handgun and either

a $200 to $500 fine or 30 to 90 day imprisonment to forfeiture of handgun and not less than a $500 fine and/or 30 to 90 day imprisonment. So, if a person is openly carrying, he better be sure to not let his handgun get covered by his jacket or other outer clothing or else he would be subject to these increased penalties.

GrassRoots GunRights opposes increasing penalties for possession of a concealed weapon. GrassRoots GunRights supports what is commonly known as Vermont carry or Alaska carry, both of which allow a person to carry a concealed weapon without a permit. Thus, increasing penalties for that which should not be illegal in the first place is going in the wrong direction. The better direction to go would be to delete Section 16-23-460 altogether and simply prosecute criminals for committing criminal acts instead of persecuting innocent people for mere possession of a concealed handgun without a CWP.

H. 3003 also amends Section 63-19-1210(9) to allow a juvenile who violates the CWP law to be charged as an adult.

After reading the entire Code of Laws dealing with firearms, there does not appear to be any section making it a crime to generally openly possess a handgun once Section 16-23-20 is repealed. Thus, no existing penalty statutes should apply for generally openly possessing a handgun. But, any amendments to H. 3003 must be carefully scrutinized to ensure things do not change for the worse.

Bottom line: As currently drafted, H. 3003 is truly a compromise bill in that gun owners give up something (i.e., in vehicle concealed carry for CWP holders; concealed carry for business owners, employees, and managers; and any kind of carry for business owners and managers of businesses that serve alcoholic beverages for on premises consumption) in order to get something (i.e., open carry). Why must gun owners give away existing privileges in order to gain other privileges?

GrassRoots is a no compromise, no surrender pro gun rights organization. GrassRoots will not accept the idea that we must give away some existing privileges in order to gain some other privileges. GrassRoots will not tolerate using our rights as political bargaining chips. Thus, until H. 3003 is amended to protect the currently existing privileges enjoyed by gun owners, GrassRoots can not support H. 3003. But, if the legislature amends H. 3003 (as identified above) to protect the existing privileges enjoyed by gun owners while extending even more privileges to gun owners, then GrassRoots will support H. 3003. Going the extra mile and turning South Carolina into an Alaska carry state by deleting Section 16-23-460 would be the ideal thing for the legislature to do.

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