

thousand dollars or imprisoned not more than two years.

(D) This article does not apply to persons lawfully defending themselves or their property.

## Article 7. Local Regulations

**23-31-510. Prohibition against regulation of certain matters.** No governing body of any county, municipality, or other political subdivision in this State may enact or promulgate any regulation or ordinance which regulates or attempts to regulate the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things.

### 23-31-520. Matters subject to regulation.

This article does not affect the authority of any county, municipality, or political subdivision to regulate the careless or negligent discharge or public brandishment of firearms, nor does it prevent the regulation of public brandishment of firearms during the times of or a demonstrated potential for insurrection, invasions, riots, or natural disasters. This article denies any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest.

**23-31-600. Retired personnel; identification cards; qualification for carrying concealed weapon.**

(A) For purposes of this section:

(1) "Identification card" is a photographic identification card complying with 18 U.S.C. Section 926C(d).

(2) "Qualified retired law enforcement officer" means any retired law enforcement officer as defined in 18 U.S.C. Section 926C(c) who at the time of his retirement was certified as a law enforcement officer in this State and who was trained and qualified to carry firearms in the performance of his duties.

(B) An agency or department within this State must comply with Section 3 of the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. Section 926C, by issuing an identification card to any person who retired from that agency or department and who is a qualified retired law enforcement officer. If the agency or department currently issues credentials to active law enforcement officers, then the agency or department may comply with the requirements of this section by issuing the same credentials to retired law enforcement officers. If the same credentials are issued, then the agency or department must stamp the credentials with the word "RETIRED."

(C)(1) Subject to the limitations of subsection (E), a qualified retired law enforcement officer may carry a concealed weapon in this State if he possesses an identification card issued pursuant to subsection (C) along with a certification that

he has, not less recently than one year before the date the individual is carrying the firearm, met the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(2) The firearms certification required by this subsection may be reflected on the identification card or may be in a separate document carried with the identification card.

(D) The restrictions contained in Sections 23-31-220 and 23-31-225 are applicable to a person carrying a concealed weapon pursuant to this section.

(E) The agency or department may charge the retired law enforcement officer a reasonable fee for issuing the identification card and must provide the retired officer with the opportunity to qualify to carry a firearm under the same standards for training and qualification for active law enforcement officers to carry firearms. However, the agency or department, as provided in 18 U. S. C. Section 926C(c)(5), may require the retired officer to pay the actual expenses of the training and qualification.

[Current through 2007 Legislation]

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# SOUTH DAKOTA

## S.D. CODIFIED LAWS

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### Title 7. Counties

**7-18A-36. Ordinances restricting firearms, ammunition, or their component prohibited and void.** No county may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

### Title 8. Townships

**8-5-13 Ordinances regarding firearms and ammunition prohibited -- Ordinances null and void.** No township may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

### Title 9. Municipal Government

**9-19-20. Firearm restrictions prohibited.** No municipality may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

### Title 22. Crimes

#### Chapter 1. Definitions and General Provisions

**22-1-1. Construction.** The rule of the common law that penal statutes are to be strictly

construed has no application to this title. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice.

**22-1-2. Definitions.** Terms used in this title mean: ...

(2) "Actor," the person who takes the active part in a transaction; ...

(4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; ...

(6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed; ...

(8) "Controlled weapon" includes a firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;

(9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(10) "Dangerous weapon" or "deadly weapon," any firearm, knife, stun gun, knife, or device, instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm; ...

(13) "Destructive device,"

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

(14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5; ...

(16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the word "gunpowder" includes any propellant that upon

oxidization emits heat and light and is commonly used in firearms cartridges;

(17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon; ...

(23) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device; ...

(32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive; ...

(44) "Seller," any person or employee engaged in the business of selling pistols at retail;

(45) "Short rifle," any rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

(46) "Short shotgun," a shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches; ...

## Chapter 14. Unlawful Use of Weapons

**22-14-5 Possession of firearm with altered serial number -- Penalty -- Exception.** Any person who possesses any firearm on which the manufacturer's serial number has been changed, altered, removed or obliterated is guilty of a Class 6 felony.

The provisions of this section do not apply to persons who have applied for a new serial number pursuant to § 23-7-43.

**22-14-6 Possession of controlled weapon - Penalty -- Applicability.** Any person who knowingly possesses a controlled weapon is guilty of a Class 6 felony. However, the provisions of this section do not apply to a person who:

(1) Is a law enforcement officer or member of the armed forces of the United States or South Dakota National Guard acting in the lawful discharge of duties;

(2) Has a valid state or federal license issued pursuant to law for such weapon or has registered such weapon with the proper state or federal authority pursuant to law;

(3) Possesses a controlled weapon briefly after having found it or taken it from an offender; or

(4) Possesses a controlled weapon, except a machine gun or short shotgun, under circumstances which negate any purpose or likelihood that the weapon would be used unlawfully.

**22-14-9 Possession of concealed weapon without permit -- Penalty.** Any person, other than a law enforcement officer acting under color of authority, who:

(1) Carries a pistol or revolver, loaded or unloaded, concealed on or about his or her person without a permit as provided in chapter 23-7; or

(2) Carries a pistol or revolver, loaded or unloaded, concealed in any vehicle while operating the vehicle, without a permit as provided in chapter 23-7 is guilty of a Class 1 misdemeanor.

**22-14-9.1. Possession of concealed weapon without possession of permit -- Penalty.** No person may possess a concealed pistol in accordance with chapter 23-7 or this chapter unless that person also has in his or her physical possession a valid South Dakota permit to carry a concealed pistol or a permit effective pursuant to § 23-7-7.3. A violation of this section is a petty offense. However, if within twenty-four

hours of being charged with a violation of this section, the person produces a permit to carry a concealed pistol which was valid at the time of the alleged offense in the office of the officer making the demand, the charge shall be dismissed.

**22-14-9.2 Permission to carry concealed weapon in another state -- Failure to comply with laws of South Dakota -- Penalty.** Any person who is permitted to carry a concealed pistol in a state with which the secretary of state has entered into a reciprocity agreement pursuant to § § 23-7-7.3, 22-14-9.1, 22-14-9.2, 23-7-7, 23-7-7.1, and 23-7-8 may carry a concealed pistol in this state if the permit holder carries the pistol in compliance with the laws of this state. A violation of this section is a Class 1 misdemeanor.

**22-14-15. Possession of firearm by person convicted of violent crime or felony -- Penalty -- Time limit conviction as felony -- Fifteen-year period.** No person who has been convicted in this state or elsewhere of a crime of violence or a felony pursuant to § § 22-42-2, 22-42-3, 22-42-4, 22-42-7, 22-42-8, 22-42-9, 22-42-10 or 22-42-19, may possess or have control of a firearm. A violation of this section is a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation, or parole more than fifteen years prior to the commission of the principal offense.

**22-14-15.1 Possession of firearm by person convicted of possession of controlled substance -- Penalty -- Time limit.** No person who has been convicted of a felony under chapter 22-42 or of a felony for a crime with the same elements in another state may possess or have control of a firearm. A violation of this section is a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation, or parole, for a felony under chapter 22-42 more than five years prior to the commission of the principal offense and is not subject to the restrictions in § 22-14-15.

**22-14-15.2 Possession of firearm after conviction of crime involving domestic violence -- Misdemeanor -- Loss of right to possess firearm -- Restoration of rights.** No person who has been convicted of any misdemeanor crime involving an act of domestic violence may possess or have control of a firearm for a period of one year from the date of conviction. Any violation of this section is a Class 1 misdemeanor. At the end of the one year period, any civil rights lost as a result of this provision shall be restored. Any person who has lost their right to possess or have control of a firearm as a result of a misdemeanor conviction involving an act of domestic violence, prior to the date of the effectiveness of this Act, shall be restored to those civil rights one year after the effective date of this Act. This section shall be repealed on the date when any federal law restricting the right to possess firearms for misdemeanor domestic violence convictions is repealed.

Once eligible under the statute, a person convicted under this section may petition the convicting court for an order reflecting the restoration of any firearm rights lost, if the person has not been convicted within the prior year of a crime for which firearm rights have been lost. A petition filed under this section shall be verified by the petitioner and served upon the states attorney in the county where the conviction occurred. Thirty days after service upon the states attorney, the court shall enter

the order, if the court finds that the petitioner is eligible for relief under this section.

EDITOR'S NOTE.

Pursuant to its own terms, this section is repealed on the date when any federal law restricting the right to possess firearms for misdemeanor domestic violence convictions is repealed.

**22-14-16. Giving of firearm to person convicted of violent crime or felony -- Penalty.** Any person who knows that another person is prohibited by § 22-14-15 or 22-14-15.1 from possessing a firearm, and who knowingly gives, loans, or sells a firearm to that person is guilty of a Class 6 felony.

**22-14-17 Applicability of chapter to firearm incapable of discharge.**

The provisions of this chapter do not apply to any firearm which has been permanently altered so it is incapable of being discharged.

## Chapter 14A. Explosives and Destructive Devices

**22-14A-4: Sale or possession of destructive device -- Penalty.** Any person who knowingly sells, offers for sale, transports or possesses any destructive device is guilty of a Class 4 felony. If such person has been previously convicted of a crime of violence in this state or elsewhere, the offense is a Class 3 felony.

**22-14A-13 Possession of materials to make destructive device -- Penalty.** Any person who possesses any substance, material, or any combination of substances or materials, with the intent to make a destructive device without first obtaining a permit from the department of public safety to make such device, is guilty of a Class 5 felony.

**22-14A-16. Chapter not applicable to military, law enforcement, and permit holders.** This chapter shall not apply to the armed forces of the United States, the National Guard, any law enforcement agency or any officer, agent, employee or member thereof acting in a lawful capacity and any person possessing a valid seller's permit or user's permit from the United States federal government for explosive and destructive devices.

**22-14A-21 Possession of registered or licensed destructive device.** Any person may possess destructive devices that are registered with, or licensed by, the state or federal government pursuant to law.

## Title 23. Law Enforcement

### Chapter 7. Firearms Control

**23-7-1. Definitions.** Terms used in this chapter, unless the context otherwise requires, mean:

(1) "Antique firearm," a firearm as defined in subdivision 22-1-2(4);

(2) "Concealed," a firearm as defined in subdivision 22-1-2(6);

(3) "Crime of violence," an action as defined in subdivision 22-1-2(9);

(4) "Pistol," a firearm as defined in subdivision 22-1-2(32);

(5) "Seller," a person as defined in subdivision 22-1-2(44).

**23-7-1.1. Exception for antique or nondischargeable firearms.** This chapter shall not apply to antique firearms or to firearms

which have been permanently altered so they are incapable of being discharged.

**23-7-7 Permit to carry concealed pistol -- Valid statewide -- Criminal history check.** A permit to carry a concealed pistol shall be issued to any person by the sheriff of the county in which the applicant resides. The permit shall be valid throughout the state and shall be issued pursuant to § 23-7-7.1. Prior to issuing the permit, the sheriff shall execute a background investigation, including a criminal history check, of every applicant for the purposes of verifying the qualifications of the applicant pursuant to the requirements of § 23-7-7.1. For the purposes of this section, a background investigation is defined as a computer check of available online records.

**23-7-7.1 Temporary permit to carry concealed pistol -- Requirements.** A temporary permit to carry a concealed pistol shall be issued within five days of application to a person if the applicant:

- (1) Is eighteen years of age or older;
- (2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime of violence;
- (3) Is not habitually in an intoxicated or drugged condition;
- (4) Has no history of violence;
- (5) Has not been found in the previous ten years to be a "danger to others" or a "danger to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;
- (6) Has been a resident of the county or municipality where the application is being made for at least thirty days;
- (7) Has had no violations of chapter 23-7, 22-14, or 22-42 constituting a felony or misdemeanor or in the two five years preceding the date of application or is not currently charged under indictment or information for such an offense; and
- (8) Is a citizen of the United States or has been in the United States legally for at least two years; and
- (9) Is not a fugitive from justice.

A person denied a permit may appeal to the circuit court pursuant to chapter 1-26.

**23-7-7.3. Reciprocity -- Conditions.** The attorney general shall compare South Dakota permit issuance statutes with the permit issuance statutes in states with which reciprocity is sought or requested in order to determine whether the laws of the other state meet or exceed the requirements of this chapter for the issuance of a permit. The secretary of state may enter into reciprocity agreements with other states after the attorney general has notified the secretary of state that the other states' laws meet or exceed the provisions of this chapter.

**23-7-9. Sale of pistol -- Waiting period -- Exemption -- Penalty.** No federal firearms licensee may deliver a pistol to a person who has purchased a pistol until forty-eight hours have elapsed from the time of the sale of the pistol. A person who has in his or her possession a valid permit to carry a concealed pistol is exempt from the forty-eight hour waiting period. When a pistol is delivered, the pistol shall be securely wrapped and shall be unloaded. A pistol that is securely wrapped and delivered to a purchaser pursuant to this section is not a concealed weapon under § 22-14-9. A violation of this section is a Class 1 misdemeanor.

**23-7-10. Application to purchase pistol -- Form -- Requirements -- Retention.** At the time of purchase of a pistol, any person who does not have in his or her possession a valid permit to carry a concealed pistol shall complete an application to purchase a pistol. The form of the application to purchase a pistol shall be prescribed by the secretary of state. The application shall require the applicant's complete name, address, occupation, place and date of birth, physical description, the date and hour of application, a statement that the applicant has never pled guilty to, nolo contendere to, or been convicted of a crime of violence, a statement that the information on the application is true and correct, and his signature. The federal firearms licensee shall, within six hours, send by first class mail or hand deliver the completed application to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident. The duplicate shall be returned to the federal firearms licensee by the chief of police or sheriff and the original shall be retained by for a period of one year.

**23-7-11. Wholesale sales -- Inapplicable.** Sections 23-7-7 to 23-7-12, inclusive, do not apply to sales at wholesale.

**23-7-12. False information or identity -- Penalty.** No person, in purchasing or otherwise securing delivery of a pistol or in applying for a permit to carry a concealed pistol, may give false information or offer false evidence of his identity. A violation of this section is a Class 6 felony.

**23-7-18. Sale -- Purchaser identity determined -- Penalty.** No pistol shall be sold in violation of any provisions of this chapter, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity. A violation of this section is a Class 1 misdemeanor.

**23-7-40. Permissive firearms sales and delivery -- Contiguous states -- Federal law.** The state of South Dakota herewith permits residents of contiguous states and residents of this state, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearms accessories in South Dakota and in states contiguous to South Dakota. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922 (b), (3) (A) of Public Law 90-618 of the 90th United States Congress, second session.

**23-7-41. Repeal of federal restrictions -- No effect upon permissive firearms sales and delivery -- Contiguous states.** In the event that presently enacted federal restrictions on the purchase, sale, trade, delivery, transportation or conveyance of firearms accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, § 23-7-40 shall in no way be interpreted to prohibit or restrict the purchase, sale, trade, delivery, transportation or conveyance of shotguns, rifles, ammunition, reloading components, or firearms accessories by residents of this state or of contiguous states, or of any other states who are otherwise competent to purchase, sell, trade, deliver, transport or convey rifles, shotguns, ammunition, reloading components or firearms

accessories in this state, in contiguous states or other states.

**23-7-43. New serial number required where original serial has been changed, altered, removed or obliterated.** Upon application by an owner of a firearm, the director of the division of criminal investigation shall engrave or stamp a new serial number on any firearm on which the manufacturer's serial number has been changed, altered, removed or obliterated.

**23-7-44 Possession of pistol by minor prohibited -- Penalty.** No person under the age of eighteen years may knowingly possess a pistol. A violation of this section is a Class 1 misdemeanor.

**23-7-45. Possession of pistol by minor prohibited -- Exceptions.** The provisions of § 23-7-44 or to a criminal prosecution brought after transfer pursuant to chapter 26-11, do not apply to any minor who has the consent of the minor's parent or guardian to possess such pistol, and:

- (1) That the minor was in the presence of the minor's parent or guardian;
- (2) That the minor was on premises owned or leased by the minor or the minor's parent, guardian, or immediate family member;
- (3) That the minor was in the presence of a licensed or accredited gun safety instructor; or
- (4) That the pistol was being used for farming, ranching, hunting, trapping, target shooting, or gun safety instruction.

**23-7-46. Transfer of firearm or ammunition to minor -- Penalty.** No person may sell, transfer, give, loan, furnish, or deliver a firearm or firearm ammunition to any person under the age of eighteen years if such person knows or reasonably believes that the minor recipient of the transfer intended, at the time of transfer, to use the firearm or ammunition in the commission or attempted commission of a crime of violence as defined in subdivision 22-1-2 (9). The affirmative defenses contained in chapter 23-7 do not apply to a prosecution under this section. A violation of this section is a Class 5 felony.

## Title 37. Trade Regulation

### Chapter 17. Sale Of Serially Numbered Appliances And Equipment

**37-17-1. Sale of goods with serial numbers -- Alteration of serial number -- Penalty.** Any person who knowingly sells or offers for sale any ... firearm ... or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or equipment, which is identified by a serial number placed thereon by the manufacturer, the original serial number of which has been destroyed, removed, altered, covered, or defaced, is guilty of a Class 2 misdemeanor if the value of the property is four hundred dollars or less. If the value of the property is more than four hundred dollars, and less than one thousand dollars, such person is guilty of a Class 1 misdemeanor. If the value of the property is one thousand dollars or greater, such person is guilty of a Class 4 felony.

[Current through all 2007 Legislation, including Supreme Court Rule 07-07, and reflects the November 2006 General Election]

**TENNESSEE**  
**TENN. CODE**

**Title 39. Criminal Offenses**

**Chapter 17. Offenses Against Public Health, Safety and Welfare**

**Part 13. Weapons**

**39-17-1301. Part Definitions.** As used in this part, unless the context otherwise requires: ...

(2) "Crime of violence" includes any degree of murder, voluntary manslaughter, aggravated rape, rape, especially aggravated robbery, aggravated robbery, burglary, aggravated assault or aggravated kidnapping;

(3)(A) "Explosive weapon" means any explosive, incendiary or poisonous gas:

(i) Bomb;

(ii) Grenade;

(iii) Rocket;

(iv) Mine; or

(v) Shell, missile or projectile that is designed, made or adapted for the purpose of inflicting serious bodily injury, death or substantial property damage;

(B) "Explosive weapon" also means:

(i) Any breakable container which contains a flammable liquid with a flashpoint of one hundred fifty degrees (150°) Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for purposes of illumination; or

(ii) Any sealed device containing dry ice or other chemically reactive substances for the purposes of causing an explosion by a chemical reaction.

(4) "Firearm silencer" means any device designed, made or adapted to muffle the report of a firearm;

(5) "Immediate vicinity" refers to the area within the person's immediate control within which the person has ready access to the ammunition; ...

(8) "Machine gun" means any firearm that is capable of shooting more than two (2) shots automatically, without manual reloading, by a single function of the trigger;

(9) "Restricted firearm ammunition" means any cartridge containing a bullet coated with a plastic substance with other than a lead or lead alloy core or a jacketed bullet with other than a lead or lead alloy core or a cartridge of which the bullet itself is wholly composed of a metal or metal alloy other than lead. "Restricted firearm ammunition" does not include shotgun shells or solid plastic bullets;

(10) "Rifle" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger;

(11) "Short barrel" means a barrel length of less than sixteen inches (16") for a rifle and eighteen inches (18") for a shotgun, or an overall firearm length of less than twenty-six inches (26");

(12) "Shotgun" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire through a smooth-bore barrel either a number of ball shot or a single projectile by a single function of the trigger; ...

(14) "Unloaded" means the rifle, shotgun or handgun does not have ammunition in the chamber, cylinder, clip or magazine, and no clip or magazine is in the immediate vicinity of the weapon; and

(15) "Hoax device" means any device that reasonably appears to be or is purported to be an explosive or incendiary device and is intended to cause alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

**39-17-1302. Prohibited weapons.**

(a) A person commits an offense who intentionally or knowingly possesses, manufactures, transports, repairs or sells:

(1) An explosive or an explosive weapon;

(2) A device principally designed, made or adapted for delivering or shooting an explosive weapon;

(3) A machine gun;

(4) A short-barrel rifle or shotgun;

(5) A firearm silencer;

(6) Hoax device;

(7) A switchblade knife or knuckles; or

(8) Any other implement for infliction of serious bodily injury or death which has no common lawful purpose.

(b) It is a defense to prosecution under this section that the person's conduct:

(1) Was incident to the performance of official duty and pursuant to military regulations in the army, navy, air force, coast guard or marine service of the United States or the Tennessee national guard, or was incident to the performance of official duty in a governmental law enforcement agency or a penal institution;

(2) Was incident to engaging in a lawful commercial or business transaction with an organization identified in subdivision (b)(1);

(3) Was incident to using an explosive or an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise;

(4) Was incident to using the weapon in a manner reasonably related to a lawful dramatic performance or scientific research;

(5) Was incident to displaying the weapon in a public museum or exhibition;

(6) Was licensed by the state of Tennessee as a manufacturer, importer or dealer in weapons; provided, that the manufacture, import, purchase, possession, sale or disposition of weapons is authorized and incident to carrying on the business for which licensed and is for scientific or research purposes or sale or disposition to the organization designated in subdivision (b)(1); or

(7) Involved acquisition or possession of a sawed-off shotgun, sawed-off rifle, machine gun or firearm silencer which is validly registered to the person under federal law in the National Firearms Registration and Transfer Records. A person who acquires or possesses a firearm registered as required by this subdivision shall retain proof of registration.

(8) Involved the manufacture and sale of an automatic knife; provided, that the sale of such knife was limited to:

(A) Retail establishments that represent in writing under oath before a notary public that they only sell the knives to law enforcement officers, military personnel and emergency medical technicians;

(B) Law enforcement officers;

(C) Military personnel; or

(D) Emergency medical technicians.

(c) It is an affirmative defense to prosecution under this section which the person must prove by a preponderance of the evidence that:

(1) The person's conduct was relative to dealing with the weapon solely as a curio, ornament or keepsake, and if the weapon is a type described in subdivisions (a)(1)-(5), that it was in a nonfunctioning condition and could not readily be made operable; or

(2) The possession was brief and occurred as a consequence of having found the weapon or taken it from an aggressor.

(d)(1) An offense under subdivisions (a)(1)-(5) is a Class E felony.

(2) An offense under subdivisions (a)(6)-(8) is a Class A misdemeanor.

**39-17-1303. Unlawful sale, loan or gift of firearm.**

(a) A person commits an offense who:

(1) Intentionally, knowingly or recklessly sells, loans or makes a gift of a firearm or switchblade knife to a minor;

(2) Intentionally, knowingly or recklessly sells a firearm or ammunition for a firearm to a person who is intoxicated; or

(3) Intentionally, knowingly, recklessly or with criminal negligence violates the provisions of § 39-17-1316.

(b) It is a defense to prosecution under subdivision (a)(1) that:

(1) A firearm was loaned or given to a minor for the purposes of hunting, trapping, fishing, camping, sport shooting or any other lawful sporting activity; and

(2) The person is not required to obtain a license under § 39-17-1316.

(c) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(d)(1) An offense under subdivision (a)(1) is a Class B felony.

(2) An offense under subdivisions (a)(2)-(5) is a Class E felony.

(3) An offense under subdivision (a)(6) is a Class C felony.

(4) An offense under subdivisions (a)(7)-(8) is a Class A misdemeanor.

**39-17-1304. Restrictions on firearm ammunition.**

(a) It is an offense for any person to possess, use or attempt to use restricted firearm ammunition while committing or attempting to commit a crime of violence. A violation of this section constitutes a separate and distinct felony.

(b) It is an offense for any person or corporation to manufacture, sell, offer for sale, display for sale or use in this state any ammunition cartridge, metallic or otherwise, containing a bullet with a hollow-nose cavity which is filled with an explosive material and designed to detonate upon impact; provided, that the provisions of this section shall not apply to any state or federal military unit or personnel for use in the performance of its duties.

(c)(1) A violation of subsection (a) by possession of restricted firearm ammunition is a Class E felony.