**South Carolina General Assembly**

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**S. 5**

**STATUS INFORMATION**

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Sponsors: Senator Jackson

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Summary: Red Flags

**HISTORY OF LEGISLATIVE ACTIONS**

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 11/30/2022 Senate Referred to Committee on **Judiciary**

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 17)

 1/10/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 17)

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**VERSIONS OF THIS BILL**

[12/02/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/5_20221202.docx)

A bill

to amend the South Carolina Code of Laws by ENACTing THE “RED FLAGS ACT” BY ADDING ARTICLE 12 TO CHAPTER 31, TITLE 23 SO AS TO PROVIDE FOR THE AUTHORITY OF LAW ENFORCEMENT OFFICERS TO SEIZE A PERSON’S FIREARMS AND AMMUNITION IF THE PERSON POSES A RISK OF IMMINENT PERSONAL INJURY TO HIMSELF OR OTHER INDIVIDUALS; TO ESTABLISH CRITERIA ADDRESSING APPLICATION FOR AND ISSUANCE OF A WARRANT; TO REQUIRE THE PROBATE COURT TO HOLD A HEARING WITHIN SEVEN DAYS OF EXECUTION OF THE WARRANT TO DETERMINE WHETHER THE FIREARMS AND AMMUNITION MAY BE RETURNED TO THE PERSON; AND FOR OTHER PURPOSES.

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

SECTION 1. This act may be known and cited as the “Red Flags Act”.

SECTION 2. Chapter 31, Title 23 of the South Carolina Code is amended by adding:

Article 12

Seizure of Firearms and Ammunition from a Person Posing

a Risk of Imminent Personal Injury to Self or Others

 Section 23‑31‑1210. A solicitor, assistant solicitor, or two law enforcement officers may file a verified complaint with any probate court, for issuance of a warrant to seize any firearms and ammunition of a person if the solicitor, assistant solicitor, or law enforcement officers have probable cause to believe that:

 (1) the person poses a risk of imminent personal injury to himself or to other individuals;

 (2) the person possesses one or more firearms; and

 (3) the firearms are within or upon any person or property.

Upon a receipt of an application that establishes the requisite grounds for the warrant as provided in Section 23‑31‑1220, a judge may issue a warrant commanding a proper law enforcement officer to enter into or upon such property, search the person and property, and take into the officer’s custody any and all firearms and ammunition. The solicitor, assistant solicitor, or law enforcement officers must not file a complaint before conducting an independent investigation and determining that probable cause exists and that there is no reasonable alternative available to prevent the person from causing imminent personal injury to himself or to others with the firearms.

 Section 23‑31‑1220. (A) A warrant may be issued on an affidavit sworn to by the complainant or complainants before the judge and establishing the grounds for issuing the warrant, and the affidavit must be made part of the seizure file. In determining whether grounds for the application exist or whether there is probable cause to believe the grounds exist, the judge shall consider:

 (1) recent threats or acts of violence by the person directed toward other persons;

 (2) recent threats or acts of violence by the person directed toward himself; and

 (3) recent acts of cruelty to animals by the person, including acts that violate Chapter 1, Title 47.

 (B) In evaluating whether any recent threats or acts of violence constitute probable cause to believe that the person poses a risk of imminent personal injury to himself or to others, the judge may consider other factors including, but not limited to:

 (1) the reckless use, display, or brandishing of a firearm by the person;

 (2) a history of the use, attempted use, or threatened use of physical force by the person against other persons;

 (3) prior involuntary confinement of the person in a hospital for persons with psychiatric disabilities; and

 (4) the illegal use of controlled substances or abuse of alcohol by the person.

 Section 23‑31‑1230. If the judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the judge shall issue a warrant naming or describing the person or property to be searched. The warrant must be directed to a proper law enforcement officer, must state the grounds or probable cause for its issuance, and must command the law enforcement officer to search within a reasonable time the person or property named for any and all firearms and ammunition. A copy of the warrant must be given to the person named therein together with a notice informing the person that the person has the right to a hearing pursuant to this section and the right to be represented by counsel at the hearing.

 Section 23‑31‑1240. The applicant for the warrant shall file a copy of the application for the warrant and all affidavits upon which the warrant is based with the clerk of the probate court for the county in which the search will be conducted no later than the next business day following the execution of the warrant. Prior to the execution and return of the warrant, the clerk of the court may not disclose any information pertaining to the application for the warrant or any affidavits upon which the warrant is based. The warrant must be executed and returned with reasonable promptness consistent with due process of law and must be accompanied by a written inventory of all firearms and ammunition seized.

 Section 23‑31‑1250. (A) Not later than seven days after execution of the warrant pursuant to this article, the probate court for the county where the person named in the warrant resides shall hold a hearing to determine whether any seized firearms and ammunition should be returned to the person named in the warrant or should continue to be held by the State. At the hearing, the State has the burden of proving all material facts by clear and convincing evidence.

 (B) If, after the hearing, the court finds by clear and convincing evidence that the person poses a risk of imminent personal injury to himself or to other individuals, the court may order that the firearms and ammunition seized pursuant to the warrant to continue to be held by the State for a period not to exceed one year.

 (C) If the court does not find clear and convincing evidence that the person poses a risk of imminent injury to himself or other individuals, the court shall order the seized firearms and ammunition to be returned to the person named in the warrant.

 (D) If the court finds that the person poses a risk of imminent personal injury to himself or to other individuals, the court shall give notice to the Department of Mental Health, which may take such action pursuant to Chapters 22, 23, and 24 of Title 44, as it deems appropriate.

 Section 23‑31‑1260. Any person whose firearms and ammunition has been ordered seized pursuant to this article, or the person’s legal representative, may transfer any seized firearms and ammunition in accordance with applicable state or federal law, to any person eligible to possess the seized firearms and ammunition. The person, or the person’s legal representative, may not request transfer until the court enters an order to continue to hold the seized firearms and ammunition pursuant to Section 23‑31‑1250(B). Upon notification in writing by the person, or the person’s legal representative, and the transferee, the law enforcement agency holding the seized firearms and ammunition shall deliver the seized firearms and ammunition to the transferee within ten days of receiving written notification from the person, or the person’s legal representative, and the transferee of the transfer request.

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

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