

10 SB 291/AP

Senate Bill 291

By: Senators Shafer of the 48th, Douglas of the 17th, Sims of the 12th, Rogers of the 21st, Powell of the 23rd and others

VETOED

**A BILL TO BE ENTITLED
AN ACT**

To amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, so as to revise comprehensively the laws concerning the carrying of concealed weapons; to revise the method by which licenses to carry weapons are issued; to prohibit the carrying of certain items in certain buildings; to provide exceptions; to provide a penalty; to prohibit the seizure or registration of firearms during official states of emergency; to prohibit any additional limitations on carrying firearms during states of emergency; to provide civil remedies for violations; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, is amended by revising subsection (e) of Code Section 16-11-127, relating to carrying deadly weapons to or at public gatherings, as follows:

"(e) A person licensed or permitted to carry a firearm by this part shall be permitted to carry such firearm, subject to the limitations of this part, in all parks, historic sites, and recreational areas, including all publicly owned buildings located in such parks, historic sites, and recreational areas and in wildlife management areas, notwithstanding Code Section 12-3-10, in wildlife management areas notwithstanding Code Section 27-3-1.1 and 27-3-6, and in public transportation notwithstanding Code Sections 16-12-122 through 16-12-127; provided, however, that a person shall not carry a firearm into a place prohibited by federal law. A person licensed or permitted to carry a firearm by this part shall also be permitted to carry such firearm, subject to the limitations of this part, in an airport in any area in which the possession of firearms is not regulated by the federal government."

SECTION 2.

Said part is further amended by revising Code Section 16-11-129, relating to license to carry pistol or revolver, as follows:

"16-11-129.

(a)(1) *Application for license or renewal license; term.* The judge of the probate court of each county may, on application under oath and on payment of a fee of \$15.00, issue a license ~~or renewal license~~ valid for a period of five years to any person whose domicile is in that county or who is on active duty with the United States armed forces and who is not a domiciliary of this state but who either resides in that county or on a military reservation located in whole or in part in that county at the time of such application, which license ~~or renewal license~~ shall authorize that person to carry any pistol or revolver in any county of

this state notwithstanding any change in that person's county of residence or state of domicile. Applicants shall submit the application for a license ~~or renewal license~~ to the judge of the probate court on forms prescribed and furnished free of charge to persons wishing to apply for the license ~~or renewal license~~. An applicant who is not a United States citizen shall provide sufficient personal identifying data, including without limitation his or her place of birth and United States issued alien or admission number, as the Georgia Bureau of Investigation may prescribe by rule or regulation. An applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). Forms shall be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant, such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant. The Department of Public Safety shall furnish application forms and license forms required by this Code section. The forms shall be furnished to each judge of each probate court within the state at no cost.

(2) At least 90 days before the expiration of a license issued under this subsection, the judge of the probate court shall notify the license holder in writing at the license holder's last known address that such license is expiring and provide forms for renewing such license. If the license holder desires to renew the license, the license holder shall submit the forms for renewal to the judge of the probate court of his or her county of domicile or residence, as applicable, in this state not less than 45 days prior to the expiration of such license along with a fee of \$15.00. The forms for renewal shall be completed fully by the applicant, shall affirm under oath that the license holder still meets the qualifications for eligibility for the license, and shall contain sufficient information to allow the judge of the probate court to cause a criminal history records check to be performed on the license holder to verify such eligibility for a license. Within two business days after receiving the forms for license renewal with the required fees, the judge of the probate court shall cause a criminal history records check from the Georgia Crime Information Center and the Federal Bureau of Investigation's National Instant Criminal Background Check System to be conducted for purposes of determining the eligibility of the license holder for a renewal license, and an appropriate report shall be returned to the judge of the probate court with the results of such check. Such check shall be conducted and the report returned to the judge of the probate court within 30 days. After receiving the results of the criminal history check, the judge of the probate court shall verify the eligibility of the license holder for a renewal license within ten days after receiving such report. The judge of the probate court shall date stamp the report to show the date on which the report was received by the judge of the probate court. Upon verifying the license holder's eligibility, the judge of the probate court shall issue the license holder a renewal license which shall be valid for a period of five years. The Georgia Bureau of Investigation may charge such fee as is necessary to cover the cost of the records search which shall be added to the fee for the license renewal and shall be paid at the time of making the application for license renewal. When a person who is not a United States citizen applies for renewal of a license under this paragraph, the judge of the probate court shall cause a search to be made of the records maintained by United States Immigration and Customs Enforcement to verify the eligibility of the license holder for renewal of such license. As a condition to the issuance of a renewal of a license, a license holder who is in

nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). If the judge of the probate court finds that the person is not eligible for a license under this Code section, the judge of the probate court shall deny the license renewal and shall notify the license holder in writing of the reasons for such denial. The Department of Public Safety shall furnish license renewal forms required by this paragraph. The forms shall be furnished to each judge of each probate court within the state at no cost.

(b) *Licensing exceptions.* No license or renewal license shall be granted to:

- (1) Any person who is prohibited from possessing firearms pursuant to 18 U.S.C. Section 922;
- (1.1) Any person under 21 years of age;
- (2) Any person who is a fugitive from justice or against whom proceedings are pending for any felony, forcible misdemeanor, or violation of Code Section 16-11-126, 16-11-127, or 16-11-128 until such time as the proceedings are adjudicated;
- (3) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation or any person who has been convicted of a forcible misdemeanor and has not been free of all restraint or supervision in connection therewith for at least ~~five~~ ~~seven~~ years or any person who has been convicted of a violation of Code Section 16-11-126, 16-11-127, or 16-11-128 and has not been free of all restraint or supervision in connection therewith for at least three years, immediately preceding the date of the application;
- (4) Any individual who has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within five years of the date of his or her application. The probate judge may require any applicant to sign a waiver authorizing any mental hospital or treatment center to inform the judge whether or not the applicant has been an inpatient in any such facility in the last five years and authorizing the superintendent of such facility to make to the judge a recommendation regarding whether a license to carry a pistol or revolver should be issued. When such a waiver is required by the probate judge, the applicant shall pay to the probate judge a fee of \$3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Human Resources, which the probate judge shall remit to the hospital, center, or department. The judge shall keep any such hospitalization or treatment information confidential. It shall be at the discretion of the probate judge, considering the circumstances surrounding the hospitalization and the recommendation of the superintendent of the hospital or treatment center where the individual was a patient, to issue the license or renewal license;

(B) As used in this paragraph, the term:

- (i) 'Controlled substance' means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.
- (ii) 'Convicted' means a plea of guilty, a finding of guilt by a court of competent jurisdiction, the acceptance of a plea of nolo contendere, or the affording of first offender treatment by a court of competent jurisdiction irrespective of the pendency or

~~availability of an appeal or an application for collateral relief.~~

~~(iii) 'Dangerous drug' means any drug defined as such in Code Section 16-13-71; or~~

(5) Any person not lawfully present in the United States.

(c) *Fingerprinting.*

Following completion of the application for a license ~~or the renewal of a license~~, the judge of the probate court shall require the applicant to proceed to an appropriate law enforcement agency in the county with the completed application. The appropriate local law enforcement agency in each county shall then capture the fingerprints of the applicant for a license ~~or renewal license~~ to carry a pistol or revolver, ~~place the fingerprint required by subsection (f) of this Code section on a blank license form which has been furnished to the law enforcement agency by the judge of the probate court, and place the name of the applicant on the blank license form.~~ The law enforcement agency shall be entitled to a fee of \$5.00 from the applicant for its services in connection with the application.

(d) *Investigation of applicant; issuance of license; renewal.*

(1) For ~~both~~ license applications ~~and requests for license renewals~~, the judge of the probate court shall within two business days following the receipt of the application ~~or request~~ direct the law enforcement agency to request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court. Fingerprints shall be in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of Investigation may charge such fee as is necessary to cover the cost of the records search.

(2) For ~~both~~ license applications ~~and requests for license renewals~~, the judge of the probate court shall within two business days following the receipt of the application ~~or request~~ also direct the law enforcement agency to conduct a background check using the Federal Bureau of Investigation's National Instant Criminal Background Check System and return an appropriate report to the probate judge.

(3) When a person who is not a United States citizen applies for a license ~~or renewal of a license~~ under this Code section, the judge of the probate court shall direct the law enforcement agency to conduct a search of the records maintained by the United States Bureau of Immigration and Customs Enforcement. As a condition to the issuance of a license or the renewal of a license, an applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y).

(4) The law enforcement agency shall report to the judge of the probate court within 30 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a license ~~or renewal license~~ under the terms of this Code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, a report shall not be required. The law enforcement agency shall return the application and the blank license form with the fingerprint thereon directly to the judge of the probate court within such time period. Not later than ten days after the judge of the probate court receives the report from the law enforcement agency concerning the suitability of the applicant for a firearms license, the judge of the probate court shall issue such applicant a license ~~or renewal license~~ to carry any pistol or revolver

unless facts establishing ineligibility have been reported or unless the judge determines such applicant has not met all the qualifications, is not of good moral character, or has failed to comply with any of the requirements contained in this Code section. The judge of the probate court shall date stamp the report from the law enforcement agency to show the date on which the report was received by the judge of the probate court.

(e) *Revocation, loss, or damage to license.* If, at any time during the period for which the license was issued, the judge of the probate court of the county in which the license was issued shall learn or have brought to his or her attention in any manner any reasonable ground to believe the licensee is not eligible to retain the license, the judge may, after notice and hearing, revoke the license of the person upon adjudication of falsification of application, mental incompetency, chronic alcohol or narcotic usage, conviction of any felony or forcible misdemeanor, or for violation of Code Section 16-11-126, 16-11-127, or 16-11-128. It shall be unlawful for any person to possess a license which has been revoked, and any person found in possession of any such revoked license, except in the performance of his or her official duties, shall be guilty of a misdemeanor. It shall be required that any license holder under this Code section have in his or her possession his or her valid license whenever he or she is carrying a pistol or revolver under the authority granted by this Code section, and his or her failure to do so shall be prima-facie evidence of a violation of Code Section 16-11-128. Loss of any license issued in accordance with this Code section or damage to the license in any manner which shall render it illegible shall be reported to the judge of the probate court of the county in which it was issued within 48 hours of the time the loss or damage becomes known to the license holder. The judge of the probate court shall thereupon issue a replacement for and shall take custody of and destroy a damaged license; and in any case in which a license has been lost, he or she shall issue a cancellation order and notify by telephone and in writing each of the law enforcement agencies whose records were checked before issuance of the original license. The judge shall charge the fee specified in subsection (k) of Code Section 15-9-60 for such services.

(f) *License specifications.* Licenses issued as prescribed in this Code section shall be printed on durable but lightweight card stock, and the completed card shall be laminated in plastic to improve its wearing qualities and to inhibit alterations. Measurements shall be 3 1/4 inches long, and 2 1/4 inches wide. Each shall be serially numbered within the county of issuance and shall bear the full name, residential address, birth date, weight, height, color of eyes, ~~sex, and a clear print of the right index finger and gender of the licensee. If the right index~~ ~~fingerprint cannot be secured for any reason, the print of another finger may be used but such~~ ~~print shall be marked to identify the finger from which the print is taken.~~ The license shall show the date of issuance, the expiration date, and the probate court in which issued and shall be signed by the licensee and bear the signature or facsimile thereof of the judge. The seal of the court shall be placed on the face before the license is laminated. The reverse side of the license shall have imprinted thereon in its entirety Code Section 16-11-127.

(g) *Alteration or counterfeiting of license; penalty.* A person who deliberately alters or counterfeits such a license card commits a felony and, upon conviction thereof, shall be punished by imprisonment for a period of not less than one nor more than five years.

(h) *Licenses for former law enforcement officers.* Except as otherwise provided in Code Section 16-11-130, any person who has served as a law enforcement officer for at least ten of the 12 years immediately preceding the retirement of such person as a law enforcement

officer shall be entitled to be issued a license as provided for in this Code section without the payment of any of the fees provided for in this Code section. Such person ~~must shall~~ comply with all the other provisions of this Code section relative to the issuance of such licenses. As used in this subsection, the term 'law enforcement officer' means any peace officer who is employed by the United States government or by the State of Georgia or any political subdivision thereof and who is required by the terms of his or her employment, whether by election or appointment, to give his or her full time to the preservation of public order or the protection of life and property or the prevention of crime. Such term shall include conservation rangers. Licenses issued to such former law enforcement officers shall be distinctive in design by the use of color or style or other means from other licenses issued under this Code section.

(i) *Temporary renewal licenses.*

(1) Any person who holds a license under this Code section to carry a pistol or revolver may, at the time he or she applies for a renewal of the license, also apply for a temporary renewal license if less than ~~90~~ 45 days remain before expiration of the license he or she then holds or if his or her previous license has expired within the last 30 days.

(2) Unless the judge of the probate court knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license, the judge shall at the time of application issue a temporary renewal license to the applicant.

(3) Such a temporary renewal license shall be in the form of a paper receipt indicating the date on which the court received the renewal application and shall show the name, address, ~~sex~~ gender, age, and race of the applicant and that the temporary renewal license expires 90 days from the date of issue.

(4) During its period of validity, the temporary renewal permit, if carried on or about the holder's person together with the holder's previous license, shall be valid in the same manner and for the same purposes as a five-year license.

(5) A \$1.00 fee shall be charged by the probate court for issuance of a temporary renewal license.

(6) A temporary renewal license may be revoked in the same manner as a five-year license.

(j) When an eligible applicant who is a United States citizen fails to receive a license, temporary permit, or renewal license within the time period required by this Code section and the application or request has been properly filed, the applicant may bring an action in mandamus or other legal proceeding in order to obtain a license, temporary license, or renewal license, and such applicant shall be entitled to recover his or her costs in such action, including reasonable attorney's fees."

SECTION 3.

Said part is further amended by adding a new Code section to read as follows:

"16-11-136.

(a) No officer or employee of the state or any political subdivision thereof, member of the National Guard in the service of the state, or any person operating pursuant to or under color of state law, receiving state funds, under control of any official of the state or political subdivision thereof, or providing services to such officer, employee, or other person, while acting during a declared official state of emergency, shall:

(1) Temporarily or permanently seize, or authorize seizure of, any firearm the possession of

which is not prohibited under Article 4 of Chapter 11 of this title, other than as evidence in a criminal investigation;

(2) Require registration of any firearm for which registration is not required by Article 4 of Chapter 11 of this title;

(3) Prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Article 4 of Chapter 11 of this title; or

(4) Prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Article 4 of Chapter 11 of this title, solely because such person is operating under the direction, control, or supervision of an agency of the state or political subdivision thereof during a declared official state of emergency.

(b) Any individual aggrieved by a violation of this Code section may seek in the courts of this state relief in an action at law or in equity or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities provided by this Code section.

(c) In addition to any other remedy at law or in equity, an individual aggrieved by the seizure or confiscation of a firearm in violation of this Code section may bring an action for return of such firearm in the superior court of the county in which that individual resides or in which such firearm is located. In any action or proceeding to enforce this Code section, the court shall award the prevailing party, other than the state or political subdivision thereof, reasonable attorney fees."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.