

The Senate Rules Committee offered the following substitute to HB 89:

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To provide a short title; to amend Part 1 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, so as to provide for a felony for soliciting, persuading, encouraging, or enticing any dealer to transfer or otherwise convey a firearm to anyone other than the actual buyer; to amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to the carrying and possession of firearms, so as to change certain provisions regarding the transportation and carrying of certain firearms; to prohibit the carrying of firearms and other weapons into certain buildings; to provide a definition; to authorize the carrying of firearms in certain locations; to require the timely issuance of firearm licenses; to prohibit certain employers from searching the private vehicles of employees; to prohibit employers from conditioning employment based upon certain regulations regarding the possession of a firearm; to provide exceptions; to provide certain immunity for employers; to provide for civil remedies; to amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to provide certain immunity from liability for certain persons and entities that voluntarily and without compensation assist state agencies during times of declared emergencies; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Business Security and Employee Privacy Act."

SECTION 2.

Part 1 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, is amended by adding a new Code section to read as follows:

"16-11-113.

Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally aids or abets such person, shall be guilty of a felony. This Code section shall not apply to a federal law enforcement officer or a peace officer, as defined in Code Section 16-1-3, in the performance of his or her official duties or other person under such officer's direct supervision."

SECTION 3.

Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to the carrying and possession of firearms, is amended by revising Code Section 16-11-126, relating to the offense of carrying a concealed weapon, as follows:

"16-11-126.

(a) A person commits the offense of carrying a concealed weapon when such person knowingly has or carries about his or her person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character outside of his or her home or place of business, except as permitted under this Code section.

(b) Upon conviction of the offense of carrying a concealed weapon, a person shall be punished as follows:

(1) For the first offense, he or she shall be guilty of a misdemeanor; and

(2) For the second offense, and for any subsequent offense, he or she shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than two years and not more than five years.

(c) This Code section shall not permit, outside of his or her home, motor vehicle, or place of business, the concealed carrying of a pistol, revolver, or concealable firearm by any person unless that person has on his or her person a valid license issued under Code Section 16-11-129 and the pistol, revolver, or firearm may only be carried in a shoulder holster, waist belt holster, any other holster, hipgrip, or any other similar device, in which event the weapon may be concealed by the person's clothing, or a handbag, purse, attache case, briefcase, or other closed container. ~~Carrying on the person in a concealed manner other than as provided in this subsection shall not be permitted and shall be a violation of this Code section. Any person having been issued a license to carry a concealed weapon pursuant to Code Section 16-11-129 shall be permitted to carry such weapon, subject to the limitations of this part, in all parks, historic sites, or recreational areas as defined by Code Section 12-3-10.~~

(d) This Code section shall not forbid the transportation of any firearm by a person who is not among those enumerated as ineligible for a license under Code Section 16-11-129, provided the firearm is enclosed in a case, unloaded, and separated from its ammunition. ~~(e) This Code section shall not forbid any person who is not among those enumerated as ineligible for a license under Code Section 16-11-129 from transporting a loaded firearm in any private passenger motor vehicle in an open manner and fully exposed to view or in the glove compartment, console, or similar compartment of the vehicle; provided, however, that any person in possession of a valid permit issued pursuant to Code Section 16-11-129 may carry a handgun in any location in a motor vehicle.~~

~~(e)~~(f) On and after October 1, 1996, a person licensed to carry a handgun in any state whose laws recognize and give effect within such state to a license issued pursuant to this part shall be authorized to carry a handgun in this state, but only while the licensee is not a resident of this state; provided, however, that such ~~licenseholder~~ license holder shall carry the handgun in compliance with the laws of this state."

SECTION 4.

Said part is further amended by revising Code Section 16-11-127, relating to carrying deadly weapons to or at public gatherings, as follows:

"16-11-127.

(a) Except as provided in Code Section 16-11-127.1, a person ~~is~~ shall be guilty of a misdemeanor when he or she carries ~~to or while at a public gathering~~ any explosive compound, firearm, or knife designed for the purpose of offense and defense into a prohibited building.

(b) For the purpose of this Code section, ~~'public gathering' shall include, but shall not be limited to,~~ 'prohibited building' means buildings housing any of the following: professional or college athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings government offices, or establishments at which alcoholic beverages are sold for consumption on the premises and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food. Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to carry such firearm by this part.

(c) This Code section shall not apply to competitors participating in organized sport shooting events. Law enforcement officers, peace officers retired from state or federal law enforcement agencies, judges, magistrates, solicitors-general, and district attorneys may carry pistols in ~~publicly owned or operated government office~~ government office buildings.

(d) It ~~is~~ shall be an affirmative defense to a violation of this Code section if a person notifies a law enforcement officer or other person employed to provide security for a ~~public gathering prohibited building~~ of the presence of such item as soon as possible after learning of its presence and surrenders or secures such item as directed by ~~the~~ such law enforcement officer or other person employed to provide security for a ~~public gathering~~ such prohibited building.

(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 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."

SECTION 5.

Said part is further amended by revising subsection (d) of Code Section 16-11-129, relating to a license to carry a pistol or revolver and temporary renewal permits, as follows:

"(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 ~~notify~~ report to the judge of the probate court within ~~50~~ 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 ~~60~~ ten days after ~~the date of the application~~ 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 the such applicant a license or renewal license to carry any pistol or revolver if no unless facts establishing ineligibility have been reported and if or unless the judge determines the such applicant has not met all the qualifications, is not of good moral character, and has complied or has failed to comply with all any of the requirements contained in this Code section; provided, however, that if the report from the law enforcement agency contains information that, in the opinion of the judge of the probate court, requires further investigation, the judge of the probate court shall be authorized to investigate such information if such investigation is undertaken and pursued on an expedited basis. 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."

SECTION 6.

Said part is further amended by revising Code Section 16-11-129, relating to a license to carry a pistol or revolver and temporary renewal permits, by adding a new subsection to read as follows:

"(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 7.

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

"16-11-135.

(a) Except as provided in this Code section, no private or public employer, including the state and its political subdivisions, shall establish, maintain, or enforce any policy or rule that has the effect of allowing such employer or its agents to search the locked privately owned vehicles of employees or invited guests on the employer's parking lot and access thereto.

(b) Except as provided in this Code section, no private or public employer, including the state and its political subdivisions, shall condition employment upon any agreement by a prospective employee that prohibits an employee from entering the parking lot and access thereto when the employee's privately owned motor vehicle contains a firearm that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such privately owned motor vehicle, provided that any applicable employees possess a Georgia firearms license.

(c) Subsection (a) of this Code section shall not apply:

- (1) To searches by certified law enforcement officers pursuant to valid search warrants or valid warrantless searches based upon probable cause under exigent circumstances;
- (2) To vehicles owned or leased by an employer;
- (3) To any situation in which a reasonable person would believe that accessing a locked vehicle of an employee is necessary to prevent an immediate threat to human health, life, or safety; or
- (4) When an employee consents to a search of their locked privately owned vehicle by licensed private security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property.

(d) Subsections (a) and (b) of this Code section shall not apply:

- (1) To an employer providing applicable employees with a secure parking area which restricts general public access through the use of a gate, security station, security officers, or other similar means which limit public access into the parking area, provided that any employer policy allowing vehicle searches upon entry shall be applicable to all vehicles entering the property and applied on a uniform and frequent basis;
- (2) To any penal institution, correctional institution, detention facility, diversion center, jail, or similar place of confinement or confinement alternative;
- (3) To facilities associated with electric generation owned or operated by a public utility;
- (4) To any United States Department of Defense contractor, if such contractor operates any facility on or contiguous with a United States military base or installation or within one mile of an airport;
- (5) To an employee who is restricted from carrying or possessing a firearm on the employer's premises due to a completed or pending disciplinary action;
- (6) Where transport of a firearm on the premises of the employer is prohibited by state or federal law or regulation;

- (7) To parking lots contiguous to facilities providing natural gas transmission, liquid petroleum transmission, water storage and supply, and law enforcement services determined to be so vital to the State of Georgia, by a written determination of the Georgia Department of Homeland Security, that the incapacity or destruction of such systems and assets would have a debilitating impact on public health or safety; or
- (8) To any area used for parking on a temporary basis.
- (e) No employer, property owner, or property owner's agent shall be held liable in any criminal or civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm, including, but not limited to, the theft of a firearm from an employee's automobile, pursuant to this Code section unless such employer commits a criminal act involving the use of a firearm or unless the employer knew that the person using such firearm would commit such criminal act on the employer's premises. Nothing contained in this Code section shall create a new duty on the part of the employer, property owner, or property owner's agent. An employee at will shall have no greater interest in employment created by this Code section and shall remain an employee at will.
- (f) In any action relating to the enforcement of any right or obligation under this Code section, an employer, property owner, or property owner's agent's efforts to comply with other applicable federal, state, or local safety laws, regulations, guidelines, or ordinances shall be a complete defense to any employer, property owner, or property owner's agent's liability.
- (g) In any action brought against an employer, employer's agent, property owner, or property owner's agent relating to the criminal use of firearms in the workplace, the plaintiff shall be liable for all legal costs of such employer, employer's agent, property owner, or property owner's agent if such action is concluded in such employer, employer's agent, property owner, or property owner's agent's favor.
- (h) This Code section shall not be construed so as to require an employer, property owner, or property owner's agent to implement any additional security measures for the protection of employees, customers, or other persons. Implementation of remedial security measures to provide protection to employees, customers, or other persons shall not be admissible in evidence to show prior negligence or breach of duty of an employer, property owner, or property owner's agent in any action against such employer, its officers or shareholders, or property owners.
- (i) All actions brought based upon a violation of subsection (a) of this Code section shall be brought exclusively by the Attorney General.
- (j) In the event that subsection (e) of this Code section is declared or adjudged by any court to be invalid or unconstitutional for any reason, the remaining portions of this Code section shall be invalid and of no further force or effect. The General Assembly declares that it would not have enacted the remaining provisions of this Code section if it had known that such portion hereof would be declared or adjudged invalid or unconstitutional.
- (k) Nothing in this Code section shall restrict the rights of private property owners to control access to their property. When the property owner is also an employer, their rights as a property owner shall govern."

SECTION 8.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising Code Section 51-1-29.2 as follows:

"51-1-29.2.

Any natural person and any association, fraternal organization, private for profit entity, not for profit entity, religious organization, or charitable organization and the officers, directors, employees, and agents of such associations, organizations, and entities, when such persons, associations, organizations, or entities are working in coordination and under the direction of an appropriate state agency, who voluntarily and without the expectation or receipt of compensation provides services or goods in preparation for, anticipation of, or during a time of emergency and in a place of emergency as declared by the Governor for the benefit of any individual natural person or his or her property to prevent or minimize harm to such natural person or to prevent, minimize, and repair injury and damage to such person's property resulting from biological, chemical, or nuclear agents; terrorism; pandemics or epidemics of infectious disease; or catastrophic acts of nature, including, but not limited to, fire, flood, earthquake, wind, storm, or wave action, or any other occurrence which warrants the declaration of a state of emergency or disaster by the Governor pursuant to Code Section 38-3-51 or by a federal agency shall not be civilly liable to any individual natural person receiving such assistance as a result of any act or omission in rendering such service if such natural person, association, organization, or entity was acting in good faith and unless the damage or injury was caused by the willful or wanton negligence or misconduct of such natural person, association, organization, or entity. Nothing in this Code section shall be construed to amend, repeal, alter, or affect in any manner any other provision of law granting immunity or limiting liability. Nothing in this Code section shall be construed to abrogate the sovereign immunity of this state as to all actions executed by any party under this Code section."

SECTION 9.

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