

Senate Bill 175

By: Senators Mullis of the 53rd, Hamrick of the 30th, Goggans of the 7th, Smith of the 52nd, Thomas of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
2 relating to dangerous instrumentalities and practices, so as to provide for the comprehensive
3 revision of certain provisions regarding Brady Law regulations; to provide a short title; to
4 require licensed gun manufacturers, importers, and dealers to conduct the National Instant
5 Criminal Background Check; to provide for the transfer of information to the Federal Bureau
6 of Investigation with regard to persons involuntarily hospitalized; to provide for the
7 regulatory authority of political subdivisions; to amend Code Section 35-3-34 of the Official
8 Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to
9 private persons and businesses, so as to provide for the transfer of information to the Federal
10 Bureau of Investigation with regard to persons involuntarily hospitalized; to authorize the
11 transfer and dissemination of certain information for purposes of the National Instant
12 Criminal Background Check; to provide for related matters; to repeal conflicting laws; and
13 for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
17 dangerous instrumentalities and practices, is amended by striking Part 5 in its entirety and
18 inserting in lieu thereof a new Part 5 to read as follows:

19 "Part 5

20 16-11-170.

21 ~~(a) It is the intention of this part to establish state regulations which are consistent with the~~
~~policy and terms of the federal Brady Handgun Violence Prevention Act by providing a~~
~~state background check law.~~

1 (b) This part shall in all respects be construed and administered in conformity with the
2 provisions of the federal Brady Handgun Violence Prevention Act. Without limiting the
3 generality of the foregoing, it is specifically intended that this part shall constitute a state
4 law requiring verification by a state official that information available does not indicate that
5 possession of a handgun by a proposed transferee would be in violation of law, as
6 authorized under 18 U.S.C. Section 922(s)(1)(D). This part shall be known and may be
7 cited as the 'Brady Handgun Violence Prevention Act.'

8 16-11-171.

9 As used in this part, the term:

10 (1) 'Bureau' means the Georgia Bureau of Investigation.

11 (2) 'Center' means the Georgia Crime Information Center within the Georgia Bureau of
12 Investigation.

13 (3) 'Dealer' means any person licensed as a dealer pursuant to 18 U.S.C. Section 921,
14 et seq., or Chapter 16 of Title 43.

15 (4) 'Handgun' means a pistol or revolver or other handgun defined in Code Section
16 16-11-131 which has a short stock and is designed to be held and fired by the use of a
17 single hand. 'Firearm' means any weapon that is designed to or may readily be converted
18 to expel a projectile by the action of an explosive or the frame or receiver of any such
19 weapon, any firearm muffler or firearm silencer, or any destructive device as defined in
20 18 U.S.C. Section 921(a)(3).

21 (5) 'Involuntarily hospitalized' means hospitalized as an inpatient in any mental health
22 facility pursuant to Code Section 37-3-81 or hospitalized as an inpatient in any mental
23 health facility as a result of being adjudicated mentally incompetent to stand trial or being
24 adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of
25 Article 6 of Title 17.

26 (5) 'NICS' means the National Instant Criminal Background Check System created by
27 the federal 'Brady Handgun Violence Prevention Act' (P. L. No. 103-159).

28 16-11-172.

29 On and after January 1, 1996, no dealer licensed pursuant to 18 U.S.C. Section 923 or
30 Chapter 16 of Title 43 shall sell or deliver from his or her business inventory at his or her
31 licensed premises any handgun to another person, other than a licensed importer, licensed
32 manufacturer, licensed dealer, or licensed collector, until:

33 (1) The dealer has obtained a completed consent form from the potential buyer or
34 transferee, which form shall have been promulgated by the bureau and provided by the

1 licensed dealer, which shall include only the name, birth date, gender, race, and social
2 security number or other identification number of such potential buyer or transferee;
3 (2) The dealer has inspected identification containing a photograph of the potential buyer
4 or transferee;
5 (3) The dealer has requested, by means of a toll-free telephone call during hours in which
6 such toll-free telephone number established by the bureau is operational as provided in
7 Code Section 16-11-177, that the bureau conduct a criminal history and involuntary
8 hospitalization records check;
9 (4) The dealer has received a unique transaction number for that inquiry from the bureau
10 verifying that the information available to the bureau does not indicate that possession
11 of a handgun by the transferee would be in violation of federal or state law; and
12 (5) The dealer has recorded the date of receipt of the identifying number and the number
13 on the consent form.

- 14 (a) All transfers or purchases of firearms conducted by a licensed importer, licensed
15 manufacturer, or licensed dealer shall be subject to the NICS. To the extent possible, the
16 center shall provide to the NICS all necessary criminal history information and wanted
17 person records in order to complete an NICS check.
- 18 (b) The center shall forward to the Federal Bureau of Investigation information concerning
19 persons who have been involuntarily hospitalized as defined in this part for the purpose of
20 completing an NICS check.
- 21 (c) For the purpose of this part, the center shall ensure that all information received shall
22 be used for the purposes of compliance with the NICS. The center shall also make every
23 effort to protect the privacy of this information.

24 16-11-173.

- 25 (a) Upon receipt of a request for a criminal history and involuntary hospitalization records
26 check, the bureau shall immediately, during the licensee's call or by return call:
- 27 (1) Review all criminal history and involuntary hospitalization records electronically
28 available to the bureau to determine if the potential buyer or transferee is prohibited from
29 receipt or possession of a handgun pursuant to state or federal law; and
- 30 (2) Inform the licensee making the inquiry that its records demonstrate that the potential
31 buyer or transferee is so prohibited or provide the licensee with a unique transaction
32 number.
- 33 (b) In the event that the electronic check of records available to the bureau as provided in
34 subsection (a) of this Code section reveals the existence of a criminal history record not
35 immediately available to the bureau so as to determine the eligibility of the potential buyer
36 to purchase a handgun, the bureau shall in the same call or return call advise the licensee

1 of such existing, but not immediately available, record. In that event, the licensee shall not
2 complete the sale of the handgun until the bureau advises the licensee that information
3 subsequently received as a result of that request shows that the potential buyer is not
4 prohibited from receiving or possessing a handgun under state or federal law.

5 (a)(1) It is declared by the General Assembly that the regulation of firearms is properly
6 an issue of general, state-wide concern.

7 (2) The General Assembly further declares that the lawful design, marketing,
8 manufacture, and sale of firearms and ammunition to the public is not unreasonably
9 dangerous activity and does not constitute a nuisance per se.

10 (b)(1) No county or municipal corporation, by zoning or by ordinance, resolution, or
11 other enactment, shall regulate in any manner gun shows; the possession, ownership,
12 transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or
13 components of firearms; firearms dealers; or dealers in firearms components.

14 (2) The authority to bring suit and right to recover against any firearms or ammunition
15 manufacturer, trade association, or dealer by or on behalf of any governmental unit
16 created by or pursuant to an Act of the General Assembly or the Constitution, or any
17 department, agency, or authority thereof, for damages, abatement, or injunctive relief
18 resulting from or relating to the lawful design, manufacture, marketing, or sale of
19 firearms or ammunition to the public shall be reserved exclusively to the state. This
20 paragraph shall not prohibit a political subdivision or local government authority from
21 bringing an action against a firearms or ammunition manufacturer or dealer for breach
22 of contract or warranty as to firearms or ammunition purchased by the political
23 subdivision or local government authority.

24 (c) A county or municipal corporation may regulate the transport, carrying, or possession
25 of firearms by employees of the local unit of government in the course of their employment
26 with such local unit of government.

27 (d) Nothing contained in this Code section shall prohibit municipalities or counties by
28 ordinance, resolution, or other enactment, from requiring the ownership of guns by heads
29 of households within the political subdivision.

30 (e) Nothing contained in this Code section shall prohibit municipalities or counties, by
31 ordinance, resolution, or other enactment, from reasonably limiting or prohibiting the
32 discharge of firearms within the boundaries of the municipal corporation or county.

33 16-11-174.

34 (a) In the event of electronic failure, scheduled computer downtime, or similar emergency
35 beyond the control of the bureau or center which prevents or delays the checks from being
36 made as provided in Code Section 16-11-173, the bureau shall immediately notify the

1 requesting licensee of the reason for, and estimated length of, such delay. After such
2 notification, the center shall, as soon as possible but in no event later than noon of the next
3 business day after the day the request is made, inform the licensee if its records indicate the
4 buyer or transferee is prohibited from possessing or transporting a firearm by state or
5 federal law or if a requested purchase or transfer is authorized. Unless notified by the
6 morning of the next day after the request is made that the potential buyer or transferee is
7 so prohibited, the licensee may complete the transaction and shall not be deemed in
8 violation of this part.

9 (b) A licensed dealer is not required to comply with the requirements of this part in the
10 event of unavailability of telephone service at the licensed premises due to the failure of
11 the entity which provides telephone service in the state, region, or other geographical area
12 in which the licensee is located to provide telephone service to the premises of the licensee
13 due to the location of such premises or the interruption of telephone service by reason of
14 hurricane, tornado, flood, natural disaster, or other act of God, war, invasion, insurrection,
15 riot, or other bona fide emergency, or other reason beyond the control of the licensee.

16 16-11-175.

17 The bureau shall be authorized to charge and collect a fee not in excess of \$5.00 for each
18 criminal history and involuntary hospitalization records check conducted pursuant to Code
19 Section 16-11-173.

20 16-11-176.

21 The bureau shall not create any list, electronic, magnetic, or otherwise, containing any of
22 the information set forth in paragraph (1) of Code Section 16-11-172 pertaining to a
23 potential buyer or transferee unless the potential buyer or transferee is prohibited from
24 receipt or possession of a handgun pursuant to state or federal law.

25 16-11-177.

26 The bureau shall establish a toll-free telephone number which shall be operational Monday
27 through Saturday between the hours of 8:00 A.M. and 10:00 P.M. and operational on
28 Sundays between the hours of 8:00 A.M. and 6:00 P.M. for purposes of responding to
29 inquiries as described in this part from licensed dealers; provided, however, that such
30 telephone service established by the bureau shall not be operational on Christmas Day. The
31 bureau shall employ and train such personnel as are necessary to administer expeditiously
32 the provisions of this Code section.

1 16-11-178.

2 (a) Any person who is denied the right to receive or purchase a handgun as a result of the
3 procedures established by this part may request amendment of the record pertaining to him
4 or her by petitioning the bureau. If the bureau fails to amend the record within seven days
5 and except as otherwise provided in subsection (b) of this Code section, the person
6 requesting the amendment may petition the superior court of the county of residence for
7 an order directing the bureau to amend the record. If the record as corrected demonstrates
8 that such person is not prohibited from receipt or possession of a handgun by state or
9 federal law, the bureau shall destroy any records it maintains which contain any
10 information derived from the criminal history record check set forth in paragraph (1) of
11 Code Section 16-11-172.

12 (b) In addition to other provisions of law relating to prohibitions against possessing or
13 transporting a handgun, any individual who has been involuntarily hospitalized within five
14 years immediately preceding the date of an application for a handgun shall be prohibited
15 from purchasing or possessing a handgun; provided, however, that, if after a hearing before
16 the committing court, the probate judge or judge of the superior court determines that based
17 on the evidence submitted by such applicant and any other evidence required by the judge
18 that such applicant is not a danger to himself or herself or others, such applicant shall not
19 be deemed ineligible to purchase a handgun as a result of being involuntarily hospitalized.
20 If such applicant is not deemed ineligible to purchase a handgun, the bureau shall destroy
21 any records it maintains which contain any information derived from the involuntary
22 hospitalization records checks set forth in paragraph (1) of Code Section 16-11-172.

23 (c) Any person erroneously identified as a prohibited person, whose records have not been
24 corrected pursuant to subsection (a) or (b) of this Code section, may bring an action in any
25 court of original jurisdiction against the State of Georgia or any political subdivision
26 thereof which is the source of the erroneous information for damages, including
27 consequential damages, injunctive relief, and such other relief as the court deems
28 appropriate. If the person prevails in the action, the court shall allow the person reasonable
29 attorney's fees as part of the costs.

30 16-11-179.

31 The bureau shall promulgate regulations to ensure the identity, confidentiality, and security
32 of all records and data provided pursuant to this part. Any government official who
33 willfully or intentionally compromises the identity, confidentiality, and security of any
34 records and data pursuant to this part shall be guilty of a felony and fined no less than
35 \$5,000.00 and shall be subject to automatic dismissal from his or her employment.

1 16-11-180.

2 Compliance with the provisions of this part shall be a complete defense to any claim or
3 cause of action under the laws of this state for liability for damages arising from the sale
4 or transfer of any handgun which has been shipped or transported in interstate or foreign
5 commerce to any person who has been convicted in any court of a crime punishable by
6 imprisonment for a term exceeding one year or who has been involuntarily hospitalized.

7 16-11-181.

8 (a) The provisions of this part shall not apply to:
9 (1) Any firearm, including any handgun with a matchlock, flintlock, percussion cap, or
10 similar type of ignition system, manufactured in or before 1898;
11 (2) Any replica of any firearm described in paragraph (1) of this subsection if such
12 replica is not designed or redesigned to use rimfire or conventional center-fire fixed
13 ammunition or uses rimfire or conventional center-fire fixed ammunition which is no
14 longer manufactured in the United States and which is not readily available in the
15 ordinary channels of commercial trade;
16 (3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11; and
17 (4) Potential buyers or transferees who hold a valid permit or license to carry a pistol or
18 revolver pursuant to Code Section 16-11-129 and who exhibit such permit or license to
19 a licensed dealer.
20 (b) Notwithstanding any other provisions of this part, in any case where a person has
21 transferred a handgun as collateral for a loan or as pledged goods in a pawn transaction and
22 such transaction has been carried out pursuant to the provisions of this part, upon such
23 person reclaiming or redeeming the handgun from the dealer or upon such person
24 transferring any other handgun as collateral or pledged goods to the same dealer or
25 reclaiming the same at any time during the 12 month period immediately following the
26 original transaction with such dealer, the provisions of this part shall not apply to such
27 transfers subsequent to the original transfer during such 12 month period.

28 16-11-182.

29 (a) Any licensed dealer or any government official who willfully and intentionally requests
30 a criminal history and involuntary hospitalization records check from the bureau for any
31 purpose other than compliance with this part or willfully and intentionally disseminates any
32 criminal history or involuntary hospitalization records information to any person other than
33 the subject of such information shall be guilty of a felony.
34 (b) Any person who, in connection with the purchase, transfer, or attempted purchase or
35 transfer of a handgun pursuant to Code Section 16-11-172, willfully and intentionally

1 makes any materially false oral or written statement or willfully and intentionally furnishes
2 or exhibits any false identification intended or likely to deceive the licensee shall be guilty
3 of a misdemeanor.

4 (c) Any licensed dealer who willfully and intentionally sells or delivers a handgun in
5 violation of this part shall be guilty of a misdemeanor.

6 (d) Any purchaser or owner of a firearm who willfully and intentionally transfers the
7 firearm at any time to a person who he or she knows to be prohibited from possession of
8 a handgun by state or federal law shall be guilty of a felony and shall be punished by
9 imprisonment for not less than one nor more than three years.

10 16-11-183.

11 The bureau shall provide the Speaker of the House of Representatives and the President of
12 the Senate an annual report including the number of inquiries made pursuant to this part
13 for the prior calendar year. Such report shall include, but not be limited to, the number of
14 inquiries received from licensees, the number of inquiries resulting in a determination that
15 the potential buyer or transferee was prohibited from receipt or possession of a handgun
16 pursuant to state or federal law, the estimated costs of administering this part, the number
17 of instances in which a person requests amendment of the record pertaining to such person
18 pursuant to subsection (a) of Code Section 16-11-178, the number of instances in which
19 the superior court issued an order directing the bureau to amend a record pursuant to
20 subsection (a) of Code Section 16-11-178, and the number of instances in which the
21 probate court or superior court issued an order directing the bureau to amend a record
22 relative to involuntary hospitalization pursuant to subsection (b) of Code Section
23 16-11-178.

24 16-11-184.

25 (a)(1) It is declared by the General Assembly that the regulation of firearms is properly
26 an issue of general, state-wide concern.

27 (2) The General Assembly further declares that the lawful design, marketing,
28 manufacture, or sale of firearms or ammunition to the public is not unreasonably
29 dangerous activity and does not constitute a nuisance per se.

30 (b)(1) No county or municipal corporation, by zoning or by ordinance, resolution, or
31 other enactment, shall regulate in any manner gun shows, the possession, ownership,
32 transport, carrying, transfer, sale, purchase, licensing, or registration of firearms,
33 components of firearms, firearms dealers, or dealers in firearms components.

34 (2) The authority to bring suit and right to recover against any firearms or ammunition
35 manufacturer, trade association, or dealer by or on behalf of any governmental unit

created by or pursuant to an Act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public shall be reserved exclusively to the state. This paragraph shall not prohibit a political subdivision or local government authority from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision or local government authority.

(c) A county or municipal corporation may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(d) Nothing contained in this Code section shall prohibit municipalities or counties, by ordinance, resolution, or other enactment, from requiring the ownership of guns by heads of households within the political subdivision.

(e) Nothing contained in this Code section shall prohibit municipalities or counties, by ordinance, resolution, or other enactment, from reasonably limiting or prohibiting the discharge of firearms within the boundaries of the municipal corporation."

SECTION 2.

Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to private persons and businesses, is amended by striking subsections (d.1) and (e) and inserting in lieu thereof new subsections (d.1), (e), and (f) to read as follows:

"(d.1)(1) The center shall be authorized and directed to review its criminal history records and involuntary hospitalization records information and to report to each dealer as provided in Code Section 16-11-173 as to whether a named potential buyer or transferee of a handgun is prohibited from purchasing or possessing a handgun by state or federal law pursuant to the requirements of Part 5 of Article 4 of Chapter 11 of Title 16. The director of the center shall establish with adequate staff and adequate telephone lines a toll-free telephone number as required in Code Section 16-11-177.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Sections 16-11-173 and 16-11-174, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges

1 Training Council and the Georgia Bureau of Investigation to meet the requirements of
2 this Code section and Code Sections 16-11-173 and 16-11-174 and to preserve the
3 confidentiality of patients' rights in all other respects. Further, notwithstanding any other
4 provisions of law and in order to carry out the provisions of this Code section and Code
5 Sections 16-11-172 and 16-11-173, the center shall be provided information as to whether
6 a person has been adjudicated mentally incompetent to stand trial or not guilty by reason
7 of insanity at the time of the crime and has been involuntarily hospitalized from the
8 records of the clerks of the superior courts concerning persons involuntarily hospitalized
9 after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks
10 of Georgia and the Georgia Bureau of Investigation to meet the requirements of this Code
11 section and Code Sections 16-11-172 and 16-11-173 and to preserve the confidentiality
12 of patients' rights in all other respects. After five years have elapsed from the date that
13 a person's involuntary hospitalization information has been received by the Georgia
14 Crime Information Center, the center shall purge its records of such information as soon
15 as practicable and in any event purge such records within 30 days after the expiration of
16 such five-year period Reserved."

17 "(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal
18 history records, wanted person records, and involuntary hospitalization records
19 information to the Federal Bureau of Investigation in conjunction with the National
20 Instant Criminal Background Check System in accordance with the federal 'Brady
21 Handgun Violence Prevention Act.' Firearms purchases within the state shall be subject
22 to the provisions of Part 5 of Article 4 of Chapter 11 of Title 16.

23 (2) The records of the Georgia Crime Information Center shall include information as
24 to whether a person has been involuntarily hospitalized. Notwithstanding any other
25 provisions of law and in order to carry out the provisions of this Code section and Code
26 Section 16-11-172, the Georgia Crime Information Center shall be provided such
27 information and no other mental health information from the involuntary hospitalization
28 records of the probate courts concerning persons involuntarily hospitalized after March
29 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the
30 Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all
31 other respects. Further, notwithstanding any other provisions of law and in order to carry
32 out the provisions of this Code section and Code Section 16-11-172, the center shall be
33 provided information as to whether a person has been adjudicated mentally incompetent
34 to stand trial or not guilty by reason of insanity at the time of the crime and has been
35 involuntarily hospitalized from the records of the clerks of the superior courts concerning
36 persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the
37 Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to

preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section."

SECTION 3.

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