

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

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

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

16 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

SECTION 1.

17 This Act shall be known and may be cited as the "Business Security and Employee Privacy
18 Act."
19

SECTION 2.

20 Part 1 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
21 relating to dangerous instrumentalities and practices, is amended by adding a new Code
22 section to read as follows:
23

1 "16-11-113.

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

8 SECTION 3.

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

12 "16-11-126.

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

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

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

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

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

1 (d) This Code section shall not forbid the transportation of any firearm by a person who
 2 is not among those enumerated as ineligible for a license under Code Section 16-11-129,
 3 provided the firearm is enclosed in a case, unloaded, and separated from its ammunition.

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

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

15 SECTION 4.

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

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

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

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

33 (3) When a person who is not a United States citizen applies for a license or renewal of
 34 a license under this Code section, the judge of the probate court shall direct the law
 35 enforcement agency to conduct a search of the records maintained by the United States
 36 Bureau of Immigration and Customs Enforcement. As a condition to the issuance of a

1 license or the renewal of a license, an applicant who is in nonimmigrant status shall
 2 provide proof of his or her qualifications for an exception to the federal firearm
 3 prohibition pursuant to 18 U.S.C. Section 922(y).

4 (4) The law enforcement agency shall ~~notify~~ report to the judge of the probate court
 5 within ~~50~~ 30 days, by telephone and in writing, of any findings relating to the applicant
 6 which may bear on his or her eligibility for a license or renewal license under the terms
 7 of this Code section. When no derogatory information is found on the applicant bearing
 8 on his or her eligibility to obtain a license or renewal license, a report shall not be
 9 required. When the law enforcement agency fails to report to the probate judge within
 10 30 days as required by this Code section, there shall be a rebuttable presumption that no
 11 derogatory information is found. The law enforcement agency shall return the
 12 application and the blank license form with the fingerprint thereon directly to the judge
 13 of the probate court within such time period. Not later than ~~60~~ 45 days after the date of
 14 the application the judge of the probate court shall issue the applicant a license or renewal
 15 license to carry any pistol or revolver ~~if no~~ unless facts establishing ineligibility have
 16 been reported ~~and if~~ or unless the judge determines the applicant has not met all the
 17 qualifications, is not of good moral character, ~~and has complied~~ or has failed to comply
 18 with ~~all~~ any of the requirements contained in this Code section."

19 SECTION 5.

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

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

29 SECTION 6.

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

31 "16-11-135.

32 (a) Except as provided in this Code section, no private or public employer, including the
 33 state and its political subdivisions, shall establish, maintain, or enforce any policy or rule
 34 that has the effect of allowing such employer or its agents to search the locked privately

1 owned vehicles of employees or invited guests on the employer's parking lot and access
2 thereto.

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

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

11 (1) To searches by certified law enforcement officers pursuant to valid search warrants
12 or valid warrantless searches based upon probable cause under exigent circumstances;

13 (2) To vehicles owned or leased by an employer;

14 (3) To any situation in which a reasonable person would believe that accessing a locked
15 vehicle of an employee is necessary to prevent an immediate threat to human health, life,
16 or safety; or

17 (4) When an employee consents to a search of their locked privately owned vehicle by
18 licensed private security officers for loss prevention purposes based on probable cause
19 that the employee unlawfully possesses employer property.

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

21 (1) To an employer providing applicable employees with a secure parking area which
22 restricts general public access through the use of a gate, security station, security officers,
23 or other similar means which limit public access into the parking area, provided that any
24 employer policy allowing vehicle searches upon entry shall be applicable to all vehicles
25 entering the property and applied on a uniform and frequent basis;

26 (2) To any penal institution, correctional institution, detention facility, diversion center,
27 jail, or similar place of confinement or confinement alternative;

28 (3) To facilities associated with electric generation owned or operated by a public utility;

29 (4) To any United States Department of Defense contractor, if such contractor operates
30 any facility on or contiguous with a United States military base or installation or within
31 one mile of an airport;

32 (5) To an employee who is restricted from carrying or possessing a firearm on the
33 employer's premises due to a completed or pending disciplinary action;

34 (6) Where transport of a firearm on the premises of the employer is prohibited by state
35 or federal law or regulation;

36 (7) To parking lots contiguous to facilities providing natural gas transmission, liquid
37 petroleum transmission, water storage and supply, and law enforcement services

1 determined to be so vital to the State of Georgia, by a written determination of the
2 Georgia Department of Homeland Security, that the incapacity or destruction of such
3 systems and assets would have a debilitating impact on public health or safety; or

4 (8) To any area used for parking on a temporary basis.

5 (e) No employer, property owner, or property owner's agent shall be held liable in any
6 criminal or civil action for damages resulting from or arising out of an occurrence
7 involving the transportation, storage, possession, or use of a firearm, including, but not
8 limited to, the theft of a firearm from an employee's automobile, pursuant to this Code
9 section unless such employer commits a criminal act involving the use of a firearm or
10 unless the employer knew that the person using such firearm would commit such criminal
11 act on the employer's premises. Nothing contained in this Code section shall create a new
12 duty on the part of the employer, property owner, or property owner's agent. An employee
13 at will shall have no greater interest in employment created by this Code section and shall
14 remain an employee at will.

15 (f) In any action relating to the enforcement of any right or obligation under this Code
16 section, an employer, property owner, or property owner's agent's efforts to comply with
17 other applicable federal, state, or local safety laws, regulations, guidelines, or ordinances
18 shall be a complete defense to any employer, property owner, or property owner's agent's
19 liability.

20 (g) In any action brought against an employer, employer's agent, property owner, or
21 property owner's agent relating to the criminal use of firearms in the workplace, the
22 plaintiff shall be liable for all legal costs of such employer, employer's agent, property
23 owner, or property owner's agent if such action is concluded in such employer, employer's
24 agent, property owner, or property owner's agent's favor.

25 (h) This Code section shall not be construed so as to require an employer, property owner,
26 or property owner's agent to implement any additional security measures for the protection
27 of employees, customers, or other persons. Implementation of remedial security measures
28 to provide protection to employees, customers, or other persons shall not be admissible in
29 evidence to show prior negligence or breach of duty of an employer, property owner, or
30 property owner's agent in any action against such employer, its officers or shareholders,
31 or property owners.

32 (i) All actions brought based upon a violation of subsection (a) of this Code section shall
33 be brought exclusively by the Attorney General.

34 (j) In the event that subsection (e) of this Code section is declared or adjudged by any
35 court to be invalid or unconstitutional for any reason, the remaining portions of this Code
36 section shall be invalid and of no further force or effect. The General Assembly declares

1 that it would not have enacted the remaining provisions of this Code section if it had
 2 known that such portion hereof would be declared or adjudged invalid or unconstitutional.
 3 (k) Nothing in this Code section shall restrict the rights of private property owners to
 4 control access to their property. When the property owner is also an employer, their rights
 5 as a property owner shall govern."

6 SECTION 7.

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

9 "51-1-29.2.

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

32 SECTION 8.

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