

House Bill 89 (AS PASSED HOUSE AND SENATE)

By: Representatives Bearden of the 68th, Horne of the 71st, Hatfield of the 177th, Maddox of the 172nd, Smith of the 168th, and others

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 relating to carrying
7 deadly weapons to or at public gatherings; to provide for constables to carry pistols in
8 publicly owned or operated buildings; to exempt constables from the prohibition of carrying
9 weapons within school safety zones, at school functions, or on school property; to change
10 certain provisions regarding the transportation and carrying of certain firearms; to prohibit
11 the carrying of firearms and other weapons into certain buildings; to provide a definition; to
12 authorize the carrying of firearms in certain locations; to require the timely issuance of
13 firearm licenses; to prohibit certain employers from searching the private vehicles of
14 employees; to prohibit employers from conditioning employment based upon certain
15 regulations regarding the possession of a firearm; to provide exceptions; to provide certain
16 immunity for employers; to provide for civil remedies; to provide for the timely issuance of
17 firearms permits and licenses; to provide for remedies for failure to receive firearms permits
18 or licenses under certain circumstances; to prohibit the consumption of alcoholic beverages
19 while carrying a firearm under certain circumstances; to amend Title 51 of the Official Code
20 of Georgia Annotated, relating to torts, so as to provide certain immunity from liability for
21 certain persons and entities that voluntarily and without compensation assist state agencies
22 during times of declared emergencies; to provide for related matters; to repeal conflicting
23 laws; and for other purposes.

24 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

1 holster, waist belt holster, any other holster, hipgrip, or any other similar device, in which
 2 event the weapon may be concealed by the person's clothing, or a handbag, purse, attache
 3 case, briefcase, or other closed container. ~~Carrying on the person in a concealed manner~~
 4 ~~other than as provided in this subsection shall not be permitted and shall be a violation of~~
 5 ~~this Code section.~~ Any person having been issued a license to carry a concealed weapon
 6 pursuant to Code Section 16-11-129 shall be permitted to carry such weapon, subject to the
 7 limitations of this part, in all parks, historic sites, or recreational areas as defined by Code
 8 Section 12-3-10 and in all wildlife management areas.

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

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

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

23 SECTION 4.

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

26 "16-11-127.

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

30 (b) For the purpose of this Code section, 'public gathering' shall include, but shall not be
 31 limited to, athletic or sporting events, churches or church functions, political rallies or
 32 functions, publicly owned or operated buildings, or establishments at which alcoholic
 33 beverages are sold for consumption on the premises and which derive less than 50 percent
 34 of their total annual gross food and beverage sales from the sale of prepared meals or food.

35 Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other
 36 public place by a person licensed or permitted to carry such firearm by this part.

1 (c)(1) This Code section shall not apply to competitors participating in organized sport
2 shooting events.

3 (2) Law enforcement officers, peace officers retired from state, local, or federal law
4 enforcement agencies, judges, magistrates, constables, solicitors-general, and district
5 attorneys may carry pistols in publicly owned or operated buildings; provided, however,
6 that a courthouse security plan adopted in accordance with paragraph (10) of
7 subsection (a) of Code Section 15-16-10 may prohibit the carrying of a pistol.

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

13 (e) A person licensed or permitted to carry a firearm by this part shall be permitted to carry
14 such firearm, subject to the limitations of this part, in all parks, historic sites, and
15 recreational areas, including all publicly owned buildings located in such parks, historic
16 sites, and recreational areas and in wildlife management areas, notwithstanding Code
17 Section 12-3-10, in wildlife management areas notwithstanding Code Section 27-3-1.1 and
18 27-3-6, and in public transportation notwithstanding Code Sections 16-12-122 through
19 16-12-127; provided, however, that a person shall not carry a firearm into a place
20 prohibited by federal law.

21 (f) A person licensed or permitted to carry a firearm by this part shall not consume
22 alcoholic beverages in a restaurant or other eating establishment while carrying a firearm.
23 Any person violating this subsection shall be guilty of a misdemeanor."

24 SECTION 5.

25 Said part is further amended in Code Section 16-11-127.1, relating to carrying weapons
26 within school safety zones, at school functions, or on school property, by striking "or" at the
27 end of paragraph (16), by replacing the period with "; or" at the end of paragraph (17), and
28 by adding a new paragraph to subsection (c) to read as follows:

29 "(18) Constables of any county of this state."

30 SECTION 6.

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

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

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

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

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

22 (4) The law enforcement agency shall ~~notify~~ report to the judge of the probate court
 23 within ~~50~~ 30 days, by telephone and in writing, of any findings relating to the applicant
 24 which may bear on his or her eligibility for a license or renewal license under the terms
 25 of this Code section. When no derogatory information is found on the applicant bearing
 26 on his or her eligibility to obtain a license or renewal license, a report shall not be
 27 required. The law enforcement agency shall return the application and the blank license
 28 form with the fingerprint thereon directly to the judge of the probate court within such
 29 time period. Not later than ~~60~~ ten days after ~~the date of the application~~ the judge of the
 30 probate court receives the report from the law enforcement agency concerning the
 31 suitability of the applicant for a firearms license, the judge of the probate court shall issue
 32 ~~the such~~ applicant a license or renewal license to carry any pistol or revolver ~~if no~~ unless
 33 facts establishing ineligibility have been reported ~~and if~~ or unless the judge determines
 34 ~~the such~~ applicant has not met all the qualifications, is not of good moral character, ~~and~~
 35 ~~has complied~~ or has failed to comply with ~~all~~ any of the requirements contained in this
 36 Code section. The judge of the probate court shall date stamp the report from the law

1 enforcement agency to show the date on which the report was received by the judge of
 2 the probate court."

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

9 SECTION 7.

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

11 "16-11-135.

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

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

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

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

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

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

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

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

35 (1) To an employer providing applicable employees with a secure parking area which
 36 restricts general public access through the use of a gate, security station, security officers,

1 or other similar means which limit public access into the parking area, provided that any
2 employer policy allowing vehicle searches upon entry shall be applicable to all vehicles
3 entering the property and applied on a uniform and frequent basis;

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

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

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

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

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

14 (7) To parking lots contiguous to facilities providing natural gas transmission, liquid
15 petroleum transmission, water storage and supply, and law enforcement services
16 determined to be so vital to the State of Georgia, by a written determination of the
17 Georgia Department of Homeland Security, that the incapacity or destruction of such
18 systems and assets would have a debilitating impact on public health or safety; or

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

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

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

35 (g) In any action brought against an employer, employer's agent, property owner, or
36 property owner's agent relating to the criminal use of firearms in the workplace, the
37 plaintiff shall be liable for all legal costs of such employer, employer's agent, property

1 owner, or property owner's agent if such action is concluded in such employer, employer's
2 agent, property owner, or property owner's agent's favor.

3 (h) This Code section shall not be construed so as to require an employer, property owner,
4 or property owner's agent to implement any additional security measures for the protection
5 of employees, customers, or other persons. Implementation of remedial security measures
6 to provide protection to employees, customers, or other persons shall not be admissible in
7 evidence to show prior negligence or breach of duty of an employer, property owner, or
8 property owner's agent in any action against such employer, its officers or shareholders,
9 or property owners.

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

12 (j) In the event that subsection (e) of this Code section is declared or adjudged by any
13 court to be invalid or unconstitutional for any reason, the remaining portions of this Code
14 section shall be invalid and of no further force or effect. The General Assembly declares
15 that it would not have enacted the remaining provisions of this Code section if it had
16 known that such portion hereof would be declared or adjudged invalid or unconstitutional.

17 (k) Nothing in this Code section shall restrict the rights of private property owners or
18 persons in legal control of property through a lease, a rental agreement, a contract, or any
19 other agreement to control access to such property. When a private property owner or
20 person in legal control of property through a lease, a rental agreement, a contract, or any
21 other agreement is also an employer, his or her rights as a private property owner or person
22 in legal control of property shall govern."

23 SECTION 8.

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

26 "51-1-29.2.

27 Any natural person and any association, fraternal organization, private for profit entity, not
28 for profit entity, religious organization, or charitable organization and the officers,
29 directors, employees, and agents of such associations, organizations, and entities, when
30 such persons, associations, organizations, or entities are working in coordination and under
31 the direction of an appropriate state agency, who voluntarily and without the expectation
32 or receipt of compensation provides services or goods in preparation for, anticipation of,
33 or during a time of emergency and in a place of emergency as declared by the Governor
34 for the benefit of any individual natural person or his or her property to prevent or
35 minimize harm to such natural person or to prevent, minimize, and repair injury and
36 damage to such person's property resulting from biological, chemical, or nuclear agents;

1 terrorism; pandemics or epidemics of infectious disease; or catastrophic acts of nature,
2 including, but not limited to, fire, flood, earthquake, wind, storm, or wave action, or any
3 other occurrence which warrants the declaration of a state of emergency or disaster by the
4 Governor pursuant to Code Section 38-3-51 or by a federal agency shall not be civilly
5 liable to any individual natural person receiving such assistance as a result of any act or
6 omission in rendering such service if such natural person, association, organization, or
7 entity was acting in good faith and unless the damage or injury was caused by the willful
8 or wanton negligence or misconduct of such natural person, association, organization, or
9 entity. Nothing in this Code section shall be construed to amend, repeal, alter, or affect in
10 any manner any other provision of law granting immunity or limiting liability. Nothing in
11 this Code section shall be construed to abrogate the sovereign immunity of this state as to
12 all actions executed by any party under this Code section."

13

SECTION 9.

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