

House Bill 26

By: Representatives Gregory of the 34th, Spencer of the 180th, Caldwell of the 20th, Braddock of the 19th, Yates of the 73rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide a short title; to provide for legislative findings; to amend Article 1 of Chapter 3
2 of Title 12 of the Official Code of Georgia Annotated, relating to general provisions
3 regarding parks, historic areas, memorials, and recreation, so as to revise provisions of law
4 regarding the use or possession of any handgun in a park, historic site, or recreational area;
5 to amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia
6 Annotated, relating to carrying and possession of firearms, so as to provide a definition; to
7 revise the provisions of law regarding the carrying of firearms; to amend Part 2 of Article 4
8 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
9 transportation passenger safety, so as to revise the provisions of law regarding the carrying
10 of firearms; to amend Title 27 of the Official Code of Georgia Annotated, relating to game
11 and fish, so as to revise certain laws regarding the carrying of firearms; to amend Part 2 of
12 Article 10 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to
13 parking for persons with disabilities, so as to revise certain laws regarding the carrying of
14 firearms; to provide for related matters; to provide an effective date; to repeal conflicting
15 laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 This Act shall be known and may be cited as the "Georgia Constitutional Carry Act of 2013."

19 **SECTION 2.**

20 The General Assembly finds that:

- 21 (1) Our founding fathers, in the unanimous Declaration of the 13 United States of
22 America, acknowledged that the purpose of civil government is to secure God-given rights;
23 (2) As such, civil governments are to punish the criminal acts that deprive their citizens
24 of their God-given rights to life, liberty, and property;

(3) The mere potential to deprive someone of life, liberty, or property should never be considered a crime in a free and just society;

(4) Evil resides in the heart of the individual, not in material objects; and

(5) Since objects or "instrumentalities" in and of themselves are not dangerous or evil, in a free and just society, the civil government should not ban or restrict their possession or use.

SECTION 3.

Article 1 of Chapter 3 of Title 12 of the Official Code of Georgia Annotated, relating to general provisions regarding parks, historic areas, memorials, and recreation, is amended by revising subsection (o) of Code Section 12-3-10, relating to directing persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules and regulations and prohibited acts generally, as follows:

~~"(o)(1) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any fireworks, explosives, or firecrackers, unless stored so as not to be readily accessible or unless such use has been approved by prior written permission of the commissioner of natural resources or his or her authorized representative.~~

~~(2) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any firearms other than a handgun, as such term is defined in Code Section 16-11-125.1.~~

~~(3) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any handgun without a valid weapons carry license issued pursuant to Code Section 16-11-129.~~

~~(4) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any bows and arrows, spring guns, air rifles, slingshots, or any other device which discharges projectiles by any means, unless the device is unloaded and stored so as not to be readily accessible or unless such use has been approved within restricted areas by prior written permission of the commissioner of natural resources or his or her authorized representative."~~

SECTION 4.

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 Code Section 16-11-125.1, relating to definitions relating to carrying and possession of firearms, as follows:

"16-11-125.1.

As used in this part, the term:

(1) 'Handgun' means a firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged by an action of an explosive where the length of the barrel, not including any revolving, detachable, or magazine breech, does not exceed 12 inches; provided, however, that the term 'handgun' shall not include a gun which discharges a single shot of .46 centimeters or less in diameter.

(2) 'Knife' means a cutting instrument designed for the purpose of offense and defense consisting of a blade that is greater than five inches in length which is fastened to a handle.

(2.1) 'Lawful weapons carrier' means any person who is not prohibited by law from possessing a weapon or long gun, any person who is licensed pursuant to Code Section 16-11-129, or any person licensed to carry a handgun or weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part.

(3) 'License holder' means a person who holds a valid weapons carry license.

(4) 'Long gun' means a firearm with a barrel length of at least 18 inches and overall length of at least 26 inches designed or made and intended to be fired from the shoulder and designed or made to use the energy of the explosive in a fixed:

(A) Shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger or from which any shot, bullet, or other missile can be discharged; or

(B) Metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger;

provided, however, that the term 'long gun' shall not include a gun which discharges a single shot of .46 centimeters or less in diameter.

(5) 'Weapon' means a knife or handgun.

(6) 'Weapons carry license' or 'license' means a license issued pursuant to Code Section 16-11-129."

SECTION 5.

Said part is further amended by revising Code Section 16-11-126, relating to having or carrying handguns, long guns, or other weapons; license requirements; exceptions for homes, motor vehicles, and other locations and conditions; and penalties for violations, as follows:
"16-11-126.

~~(a) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a weapon or long gun on his or her property or inside his or her home, motor vehicle, or place of business without a valid weapons carry license.~~

~~(b) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a long gun without a valid weapons carry license,~~

provided that if the long gun is loaded, it shall only be carried in an open and fully exposed manner.

~~(c) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry any handgun provided that it is enclosed in a case and unloaded.~~

~~(d) Any person who is not prohibited by law from possessing a handgun or long gun who is eligible for a weapons carry license may transport a handgun or long gun in any private passenger motor vehicle, provided, however, that private property owners or persons in legal control of property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such property shall have the right to forbid possession of a weapon or long gun on their property, except as provided in Code Section 16-11-135.~~

~~(e) Any person licensed to carry a handgun or weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state, but only while the licensee is not a resident of this state; provided, however, that such licensee shall carry the weapon in compliance with the laws of this state.~~

~~(f) Any person with a valid hunting or fishing license on his or her person, or any person not required by law to have a hunting or fishing license, who is engaged in legal hunting, fishing, or sport shooting when the person has the permission of the owner of the land on which the activities are being conducted may have or carry on his or her person a handgun or long gun without a valid weapons carry license while hunting, fishing, or engaging in sport shooting.~~

~~(g) Notwithstanding Code Sections 12-3-10, 27-3-1.1, 27-3-6, and 16-12-122 through 16-12-127, any person with a valid weapons carry license may carry a weapon in all parks, historic sites, or recreational areas, as such term is defined in Code Section 12-3-10, including all publicly owned buildings located in such parks, historic sites, and recreational areas, in wildlife management areas, and on public transportation; provided, however, that a person shall not carry a handgun into a place where it is prohibited by federal law.~~

~~(h)(1) No person shall carry a weapon without a valid weapons carry license unless he or she meets one of the exceptions to having such license as provided in subsections (a) through (g) of this Code section.~~

~~(2) A person commits the offense of carrying a weapon without a license when he or she violates the provisions of paragraph (1) of this subsection.~~

~~(i) Upon conviction of the offense of carrying a weapon without a valid weapons carry license, 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 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, 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 Reserved."~~

SECTION 6.

Said part is further amended by revising Code Section 16-11-127, relating to carrying weapons in unauthorized locations, as follows:

"16-11-127.

(a) As used in this Code section, the term:

(1) 'Bar' means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) 'Courthouse' means a building occupied by judicial courts and containing rooms in which judicial proceedings are held.

(3) 'Government building' means:

(A) The building in which a government entity is housed;

(B) The building where a government entity meets in its official capacity; provided, however, that if such building is not a publicly owned building, such building shall be considered a government building for the purposes of this Code section only during the time such government entity is meeting at such building; or

(C) The portion of any building that is not a publicly owned building that is occupied by a government entity.

(4) 'Government entity' means an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the state or any county, municipal corporation, consolidated government, or local board of education within this state.

(5) 'Parking facility' means real property owned or leased by a government entity, courthouse, jail, prison, place of worship, or bar that has been designated by such government entity, courthouse, jail, prison, place of worship, or bar for the parking of motor vehicles at a government building or at such courthouse, jail, prison, place of worship, or bar.

(b) A person shall be guilty of carrying a weapon or long gun in an unauthorized location and punished as for a misdemeanor when he or she carries a weapon or long gun while:

(1) In a government building;

(2) In a courthouse;

(3) In a jail or prison;

(4) In a place of worship;

(5) In a state mental health facility as defined in Code Section 37-1-1 which admits individuals on an involuntary basis for treatment of mental illness, developmental disability, or addictive disease; provided, however, that carrying a weapon or long gun in such location in a manner in compliance with paragraph (3) of subsection (d) of this Code section shall not constitute a violation of this subsection;

(6) In a bar, unless the owner of the bar permits the carrying of weapons or long guns by ~~license holders~~ any lawful weapons carrier;

(7) On the premises of a nuclear power facility, except as provided in Code Section 16-11-127.2, and the punishment provisions of Code Section 16-11-127.2 shall supersede the punishment provisions of this Code section; or

(8) Within 150 feet of any polling place, except as provided in subsection (i) of Code Section 21-2-413.

(c) Except as provided in Code Section 16-11-127.1, ~~a license holder or person recognized under subsection (e) of Code Section 16-11-126~~ any lawful weapons carrier shall be authorized to carry a weapon as provided in Code Section 16-11-135 and in every location in this state not listed in subsection (b) of this Code section; provided, however, that private property owners or persons in legal control of property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such property shall have the right to forbid possession of a weapon or long gun on their property, except as provided in Code Section 16-11-135. A violation of subsection (b) of this Code section shall not create or give rise to a civil action for damages.

(d) Subsection (b) of this Code section shall not apply:

(1) To the use of weapons or long guns as exhibits in a legal proceeding, provided such weapons or long guns are secured and handled as directed by the personnel providing courtroom security or the judge hearing the case;

(2) To ~~a license holder~~ any lawful weapons carrier who approaches security or management personnel upon arrival at a location described in subsection (b) of this Code section and notifies such security or management personnel of the presence of the weapon or long gun and explicitly follows the security or management personnel's direction for removing, securing, storing, or temporarily surrendering such weapon or long gun; and

(3) To a weapon or long gun possessed by ~~a license holder~~ any lawful weapons carrier which is under the possessor's control in a motor vehicle or is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle and such vehicle is parked in a parking facility."

SECTION 7.

Said part is further amended by revising paragraph (2) of subsection (b) of Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on school property, as follows:

"(2) Any ~~license holder~~ lawful weapons carrier who violates this subsection shall be guilty of a misdemeanor. Any person who is not a ~~license holder~~ lawful weapons carrier who violates this subsection shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not more than \$10,000.00, by imprisonment for not less than two nor more than ten years, or both."

SECTION 8.

Said part is further amended by revising paragraph (8) of subsection (c) of Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on school property, as follows:

"(8) A weapon possessed by a ~~license holder~~ lawful weapons carrier which is under the possessor's control in a motor vehicle or which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school, or when such vehicle is used to transport someone to an activity being conducted on school property which has been authorized by a duly authorized official of the school; provided, however, that this exception shall not apply to a student attending such school;".

SECTION 9.

Said part is further amended by revising subparagraph (b)(2)(H) of Code Section 16-11-129, relating to license to carry weapon, temporary renewal permit, and mandamus, as follows:

"(H) Any person who has been convicted of any of the following:

(i) Pointing a gun or a pistol at another in violation of Code Section 16-11-102; or
~~(ii) Carrying a weapon without a weapons carry license in violation of Code Section 16-11-126; or~~

~~(iii)~~(ii) Carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127

and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;".

SECTION 10.

Said part is further amended by revising subsection (b) of Code Section 16-11-135, relating to public or private employer's parking lots, right of privacy in vehicles in employer's parking lot or invited guests on lot, severability, and rights of action, as follows:

"(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 weapons carry license are lawful weapons carriers."

SECTION 11.

Part 2 of Article 4 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to transportation passenger safety, is amended by revising subsection (b) of Code Section 16-12-123, relating to bus or rail vehicle hijacking, boarding with concealed weapon, and company use of reasonable security measures, as follows:

"(b) Any person who boards or attempts to board an aircraft, bus, or rail vehicle with any explosive, destructive device, or hoax device as such term is defined in Code Section 16-7-80; firearm for which weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person ~~does is not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law~~ a lawful weapons carrier as defined in Code Section 16-11-125.1; hazardous substance as defined by Code Section 12-8-92; ~~or knife~~ or other device designed or modified for the purpose of offense and defense concealed on or about his or her person or property which is or would be accessible to such person while on the aircraft, bus, or rail vehicle shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years. The prohibition of this subsection shall not apply to any law enforcement officer, peace officer retired from a state or federal law enforcement agency, person in the military service of the state or of the United States, or commercial security personnel employed by the transportation company who is in possession of weapons used within the course and scope of employment; nor shall the prohibition apply to persons transporting weapons contained in baggage which is not accessible to passengers if the presence of such weapons has been declared to the transportation company and such weapons have been secured in a manner prescribed by state or federal law or regulation for the purpose of transportation or shipment. The provisions of this subsection shall not apply to any privately owned aircraft, bus, or rail

275 vehicle if the owner of such aircraft or vehicle has given his or her express permission to
276 board the aircraft or vehicle with the item."

277 **SECTION 12.**

278 Said part is further amended by revising subsection (a) of Code Section 16-12-127, relating
279 to prohibition on firearms, hazardous substances, knives, or other devices; penalty; and
280 affirmative defenses, as follows:

281 "(a) It shall be unlawful for any person, with the intention of avoiding or interfering with
282 a security measure or of introducing into a terminal any explosive, destructive device, or
283 hoax device as defined in Code Section 16-7-80; ~~firearm for which such person does not~~
284 ~~have on his or her person a valid weapons carry license issued pursuant to Code~~
285 ~~Section 16-11-129 unless possessing such firearm is prohibited by federal law~~ weapon as
286 defined in Code Section 16-11-125.1 if such person is not a lawful weapons carrier as
287 defined in Code Section 16-11-125.1; hazardous substance as defined by Code
288 Section 12-8-92; ~~or knife~~ or other device designed or modified for the purpose of offense
289 and defense, to:

- 290 (1) Have any such item on or about his or her person, or
291 (2) Place or cause to be placed or attempt to place or cause to be placed any such item:
292 (A) In a container or freight of a transportation company;
293 (B) In the baggage or possessions of any person or any transportation company without
294 the knowledge of the passenger or transportation company; or
295 (C) Aboard such aircraft, bus, or rail vehicle."

296 **SECTION 13.**

297 Title 27 of the Official Code of Georgia Annotated, relating to game and fish, is amended by
298 revising paragraphs (1) and (2) of Code Section 27-3-1.1, relating to acts prohibited on
299 wildlife management areas, as follows:

- 300 "(1) To possess a firearm other than a handgun, as such term is defined in Code
301 Section 16-11-125.1, during a closed hunting season for that area unless such firearm is
302 unloaded and stored in a motor vehicle so as not to be readily accessible ~~or to possess a~~
303 ~~handgun during a closed hunting season for that area unless such person possesses a valid~~
304 ~~weapons carry license issued pursuant to Code Section 16-11-129;~~
305 (2) To possess a loaded firearm other than a handgun, as such term is defined in Code
306 Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area
307 ~~or to possess a loaded handgun in a motor vehicle during a legal open hunting season for~~
308 ~~that area unless such person possesses a valid weapons carry license issued pursuant to~~
309 ~~Code Section 16-11-129;~~".

SECTION 14.

Said title is further amended by revising Code Section 27-3-6, relating to possession of firearm while hunting with bow and arrow, as follows:

"27-3-6.

It shall be unlawful for any person to possess any center-fire or rimfire firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during a primitive weapons season for deer ~~or to possess a loaded handgun while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during primitive weapons season for deer unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129.~~"

SECTION 15.

Said title is further amended by revising paragraphs (1) and (2) of subsection (a) of Code Section 27-4-11.1, relating to possession of firearms and intoxication on public fishing areas, fishing in closed fishing areas, and other restrictions in public fishing areas, as follows:

"(1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible ~~or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129;~~

(2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area ~~or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129; or~~".

SECTION 16.

Part 2 of Article 10 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to parking for persons with disabilities, is amended by revising paragraph (4) of subsection (b) of Code Section 40-6-228, relating to enforcement of parking for persons with disabilities, as follows:

"(4) Have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws for persons with disabilities; provided, however, that a person who ~~possesses a valid weapons carry license issued under Code Section 16-11-129~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1 and who carries such

347 SECTION 17.

350 SECTION 18.

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