

The Senate Committee on Public Safety offered the following substitute to HB 218:

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia  
2 Annotated, relating to carrying and possession of firearms, so as to expand weapons carry  
3 license reciprocity in this state; to provide that persons who are not residents of this state  
4 shall be authorized to carry a weapon in this state if licensed to carry in any other state; to  
5 provide that the Attorney General shall enter into an agreement with any state that requires  
6 an agreement to recognize and give effect to weapons carry licenses for reciprocity; to revise  
7 provisions for license and renewal applications; to provide for relief; to amend Code  
8 Section 17-5-54 of the Official Code of Georgia Annotated, relating to definitions and  
9 disposition of personal property in custody of law enforcement agency, so as to revise  
10 requirements for the disposition of firearms in custody of law enforcement agencies; to  
11 provide for causes of action; to amend Title 38 of the Official Code of Georgia Annotated,  
12 relating to military, emergency management, and veterans affairs, so as to provide for  
13 prohibited actions by government official or employee during declared state of emergency;  
14 to provide limits upon the emergency powers of the Governor; to provide for civil remedy;  
15 to amend Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated,  
16 relating to state tort claims, so as to waive sovereign immunity; to provide for related  
17 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 **SECTION 1.**

20 Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
21 relating to carrying and possession of firearms, is amended in Code Section 16-11-126,  
22 relating to having or carrying handguns, long guns, or other weapons, license requirement,  
23 and exceptions for homes, motor vehicles, private property, and other locations and  
24 conditions, by revising subsection (e) as follows:

25 "(e)(1)(A) Any person licensed to carry a weapon in any other state ~~whose laws~~  
26 ~~recognize and give effect to a license issued pursuant to this part~~ shall be authorized to  
27 carry a weapon in this state, but only while the licensee is not a resident of this state;  
28 provided, however, that:

29 (i) Such licensee licensed to carry a weapon in any other state shall carry the weapon  
30 in compliance with the laws of this state; and

31 (ii) No other state shall be required to recognize and give effect to a license issued  
32 pursuant to this part that is held by a person who is younger than 21 years of age.

33 (B)(i) The Attorney General shall create and maintain on the Department of Law's  
34 website a list of states whose laws recognize and give effect to a license issued  
35 pursuant to this part.

36 (ii) The Attorney General shall enter into an agreement with any state that requires  
37 an agreement to recognize and give effect to a license issued pursuant to this part.

38 (2) Any person who is not a weapons carry license holder in this state and who is  
39 licensed to carry a weapon in any other state ~~whose laws recognize and give effect to a~~  
40 ~~license issued pursuant to this part~~ shall be authorized to carry a weapon in this state for  
41 90 days after he or she becomes a resident of this state; provided, however, that such  
42 person shall carry the weapon in compliance with the laws of this state, shall as soon as  
43 practicable submit a weapons carry license application as provided for under Code

44 Section 16-11-129, and shall remain licensed in such other state for the duration of time  
45 that he or she is a resident of this state but not a weapons carry license holder in this  
46 state."

47

## SECTION 2.

48 Said part is further amended in Code Section 16-11-129, relating to weapons carry, gun  
49 safety information, temporary renewal permit, mandamus, and verification of license, by  
50 revising paragraph (1) of subsection (a), revising subparagraph (a)(3)(A), adding a new  
51 paragraph to subsection (a), and revising subsections (j) and (k) as follows:

52 "(1) The judge of the probate court of each county shall, on application under oath, on  
53 payment of a fee of \$30.00, and on investigation of the applicant pursuant to subsections  
54 (b) and (d) of this Code section, issue a weapons carry license or renewal license valid  
55 for a period of five years to any person whose domicile is in that county or who is on  
56 active duty with the United States armed forces and who is not a domiciliary of this state  
57 but who either resides in that county or on a military reservation located in whole or in  
58 part in that county at the time of such application; provided, however, that from the  
59 effective date of this Act until December 31, 2022, an application for a weapons carry  
60 license or renewal license shall be accepted in any county of this state without  
61 consideration of county of domicile. Such license or renewal license shall authorize that  
62 person to carry any weapon in any county of this state notwithstanding any change in that  
63 person's county of residence or state of domicile."

64 "(3)(A) Applicants shall submit the application for a weapons carry license or renewal  
65 license to the judge of the probate court on forms prescribed and furnished free of  
66 charge to persons wishing to apply for the license or renewal license. The judge of the  
67 probate court shall accept applications for weapons carry licenses or renewal licenses  
68 on a first come, first served basis, for a minimum of seven hours daily during normal

69 business hours. A person aggrieved by a violation of this paragraph may bring an  
70 action as provided for under subsection (j) of this Code section."

71 "(4) The probate court shall be authorized to implement online application processes for  
72 weapons carry licenses and renewal licenses. The probate court shall also be authorized  
73 to accept a weapons carry license or renewal license application by first-class mail."

74 "(j) **Applicant may seek relief.** When an eligible applicant fails to receive a license,  
75 temporary renewal license, or renewal license within the time period required by this Code  
76 section and the application or request has been properly filed, the applicant may bring an  
77 action in mandamus or other legal proceeding in order to obtain a license, temporary  
78 renewal license, or renewal license. When an applicant is otherwise denied a license,  
79 temporary renewal license, or renewal license or is otherwise denied the ability to submit  
80 an application in conformance with subparagraph (a)(3)(A) of this Code section and  
81 contends that he or she is qualified to be issued a license, temporary renewal license, or  
82 renewal license, the applicant may bring an action in mandamus or other legal proceeding  
83 in order to obtain such license. Additionally, the applicant may request a hearing before  
84 the judge of the probate court relative to the applicant's fitness to be issued such license.  
85 Upon the issuance of a denial, the judge of the probate court shall inform the applicant of  
86 his or her rights pursuant to this subsection. If such applicant is the prevailing party, he or  
87 she shall be entitled to recover his or her costs in such action, including reasonable  
88 attorney's fees.

89 (k) **Data base prohibition.**

90 (1) As used in this paragraph, the term 'multijurisdictional' means between or among  
91 more than one department, agency, or office.

92 (2) A person or entity shall not create or maintain a multijurisdictional data base of  
93 information regarding persons who have applied for or been issued weapons carry  
94 licenses.

95 (3) Any person aggrieved by a violation of this subsection may bring an action for relief.  
 96 Such person who proves by a preponderance of the evidence that he or she is or was  
 97 included in such a multijurisdictional data base shall be entitled to obtain, in addition to  
 98 appropriate declaratory or injunctive relief, expenses of litigation, including costs and  
 99 reasonable attorney's fees."

100

**SECTION 3.**

101 Code Section 17-5-54 of the Official Code of Georgia Annotated, definitions and disposition  
 102 of personal property in custody of law enforcement agency, is amended by revising  
 103 subsection (g) as follows:

104 "(g)(1) With respect to unclaimed firearms, if the sheriff, chief of police, agency director,  
 105 or designee of such official certifies that a firearm is unsafe because of wear, damage,  
 106 age, or modification or because any federal or state law prohibits the sale or distribution  
 107 of such firearm, at the discretion of such official, it shall be transferred to the Division of  
 108 Forensic Sciences of the Georgia Bureau of Investigation, a municipal or county law  
 109 enforcement forensic laboratory for training or experimental purposes, or be destroyed.

110 (2) Otherwise, an unclaimed firearm:

111 (A) Possessed by a municipal corporation shall be disposed of as provided for in Code  
 112 Section 36-37-6; provided, however, that municipal corporations shall not have the  
 113 right to reject any bids or to cancel any proposed sale of such firearms, and all sales  
 114 ~~shall be to persons~~ may be to any person, but the transfer of such firearms shall only be  
 115 to persons, specified by the winning bidders, who are licensed as firearms collectors,  
 116 dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et  
 117 seq., and who are authorized to receive such firearms under the terms of such license.  
 118 The municipal corporation shall dispose of all such firearms at least once every 12  
 119 months whenever the municipal corporation has an inventory of five or more firearms.  
 120 If a municipal corporation does not dispose of such firearms as required by this Code

121 section, a person interested in acquiring any such firearms may bring an action in  
122 mandamus or other legal proceeding to compel the disposition. A prevailing plaintiff  
123 in such an action shall be entitled to his or her costs, including reasonable attorney's  
124 fees; or

125 (B) Possessed by the state or a political subdivision other than a municipal corporation,  
126 shall be disposed of by sale at public auction ~~to persons. While any person may bid at~~  
127 auction, the transfer of such firearms shall only be to persons, specified by the winning  
128 bidders, who are licensed as firearms collectors, dealers, importers, or manufacturers  
129 under the provisions of 18 U.S.C. Section 921, et seq., and who are authorized to  
130 receive such firearms under the terms of such license. Auctions required by this  
131 subparagraph may occur online on a rolling basis or at live events, but in no event shall  
132 such auctions occur less frequently than once every 12 months during any time in  
133 which the political subdivision or state custodial agency has an inventory of five or  
134 more saleable firearms. If the state or a political subdivision other than a municipal  
135 corporation does not dispose of such firearms as required by this Code section, a person  
136 interested in acquiring any such firearms may bring an action in mandamus or other  
137 legal proceeding to compel the disposition. A prevailing plaintiff in such an action  
138 shall be entitled to his or her costs, including reasonable attorney's fees.

139 (3) If no bids from eligible recipients are received within six months from when bidding  
140 opened on a firearm offered for sale pursuant to paragraph (2) of this subsection, the  
141 firearm shall be transferred to the Division of Forensic Sciences of the Georgia Bureau  
142 of Investigation, a municipal or county law enforcement forensic laboratory for training  
143 or experimental purposes, or be destroyed."

144

#### SECTION 4.

145 Title 38 of the Official Code of Georgia Annotated, relating to military, emergency  
146 management, and veterans affairs, is amended by revising Code Section 38-3-37, relating to

147 prohibited actions by government official or employee during declared state of emergency,  
148 as follows:

149 "38-3-37.

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

151 (1) 'Firearm' means any handgun, rifle, shotgun, or similar device or weapon which will  
152 or can be converted to expel a projectile by the action of an explosive or electrical charge.

153 (2) 'License holder' shall have the same meaning as set forth in Code  
154 Section 16-11-125.1.

155 (3) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-125.1.

156 (b) No official or employee of the state or any political subdivision thereof, member of the  
157 National Guard in the service of the state, or any person operating pursuant to or under  
158 color of state law, while acting during or pursuant to a declared state of emergency, shall:

159 (1) ~~Temporarily or permanently seize,~~ Seize or authorize the seizure of; any firearm, ~~or~~  
160 ~~ammunition or any component thereof,~~ ammunition reloading equipment and supplies,  
161 or weapon, the possession of which was not prohibited by law at the time immediately  
162 prior to the declaration of a state of emergency; and other than as provided by the  
163 criminal or forfeiture laws of this state;

164 (2) Prohibit possession of any firearm, ~~or~~ ammunition or any component thereof,  
165 ammunition reloading equipment and supplies, or weapon, or promulgate any rule,  
166 regulation, or order prohibiting possession of ~~any firearm or ammunition or any~~  
167 ~~component thereof~~ if such if possession was not otherwise prohibited by law at the time  
168 immediately prior to the declaration of a state of emergency;

169 (3) Prohibit any license holder from carrying any weapon or promulgate any rule,  
170 regulation, or order prohibiting such carrying if such carrying was not otherwise  
171 prohibited by law at the time immediately prior to the declaration of a state of emergency;

172 ~~or~~

173 (4) Prohibit the manufacture, sale, or transfer of any firearm, ammunition or any  
174 component thereof, ammunition reloading equipment and supplies, or weapon, or  
175 promulgate any rule, regulation, or order prohibiting the manufacture, sale, or transfer of  
176 such if the manufacture, sale, or transfer was not otherwise prohibited by law at the time  
177 immediately prior to the declaration of a state of emergency;

178 (5) Suspend or revoke any weapons carry license issued pursuant to Code  
179 Section 16-11-129, except as authorized by such Code section;

180 (6) Refuse to accept an application for a weapons carry license which has been properly  
181 submitted in accordance with Code Section 16-11-129 if the building or courthouse is  
182 otherwise open to the public; provided, however, that no probate judge shall be  
183 responsible for any delay or closure caused by action of a third party;

184 (7) Close or limit the operational hours of or place any other restrictions upon any  
185 business engaged in the lawful manufacture, sale, or repair of firearms, ammunition or  
186 any component thereof, ammunition reloading equipment and supplies, or weapons  
187 unless closure, limitation upon hours, or other restrictions have been required of all  
188 businesses within the jurisdiction;

189 (8) Close or limit the operational hours of any lawful indoor or outdoor shooting range  
190 unless closure or limitation upon hours has been required of all businesses within the  
191 jurisdiction; or

192 ~~(4)~~(9) Require the registration of any firearm.

193 (c)(1) Any individual who is a lawful resident of the United States, is authorized to  
194 possess a firearm under the laws of this state, and is or has been subject to an act, rule,  
195 regulation, or order in violation of this Code section may bring an action in mandamus  
196 or other legal proceeding. A prevailing plaintiff in such action shall be entitled to recover  
197 his or her costs in such action, including reasonable attorney's fees."

198

**SECTION 5.**

199 Said title is further amended in Code Section 38-3-51, relating to emergency powers of  
200 Governor, termination of emergency, limitations in energy emergency, and immunity, by  
201 revising paragraph (1) of subsection (d) as follows:

202 "(1) Suspend any regulatory statute, other than Code Section 38-3-37, prescribing the  
203 procedures for conduct of state business, or the orders, rules, or regulations of any state  
204 agency, if strict compliance with any statute, order, rule, or regulation would in any way  
205 prevent, hinder, or delay necessary action in coping with the emergency or disaster;"

206

**SECTION 6.**

207 Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to  
208 state tort claims, is amended by adding a new Code section to read as follows:

209 "50-21-38.

210 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,  
211 or third-party claim brought in the courts of this state by an aggrieved person seeking a  
212 declaratory judgment, injunctive relief, or reasonable attorney fees against the state, a  
213 municipality, or any other political subdivision thereof under subparagraph (a)(3)(A) and  
214 subsections (j) and (k) of Code Section 16-11-129 and subsection (g) of Code  
215 Section 17-5-54. This Code section shall not be construed to alter or amend any other  
216 waiver of sovereign immunity provided by law."

217

**SECTION 7.**

218 This Act shall become effective upon its approval by the Governor or upon its becoming law  
219 without such approval.

220

**SECTION 8.**

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