

The House Committee on Public Safety and Homeland Security offers the following substitute to SB 259:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
2 offenses against public order and safety, so as to revise various laws pertaining to firearms
3 and the carrying and possession of firearms and other weapons; to remove places of worship
4 from unauthorized locations a weapon or long gun may be carried; to clarify the type of
5 hospitalization as an inpatient in any mental hospital that prohibits the issuance of a weapons
6 carry license; to provide for online application for weapons carry licenses and renewal
7 licenses; to revise the database prohibition; to provide for relief; to provide for a preemption
8 for the discharge of firearms under certain circumstances; to amend Article 3 of Chapter 5
9 of Title 17 of the Official Code of Georgia Annotated, relating to disposition of property
10 seized, so as to revise requirements for the disposition of firearms in custody of law
11 enforcement agencies; to provide for causes of action; to amend Code Section 35-3-34 of the
12 Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal
13 records to private persons and businesses, resulting responsibility and liability of issuing
14 center, and provision of certain information to the FBI in conjunction with the National
15 Instant Criminal Background Check System, so as to provide for judicial procedures for
16 purging a person's involuntary hospitalization information received by the center for the
17 purpose of the National Instant Criminal Background Check System under certain
18 circumstances; to change provisions relating to the retention of a person's involuntary

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19 hospitalization information; to amend Title 37 of the Official Code of Georgia Annotated,
20 relating to mental health, so as to require judicial notification to certain persons admitted to
21 certain facilities of certain firearm prohibitions that attach to such admission; to provide for
22 retention of jurisdiction; to amend Title 38 of the Official Code of Georgia Annotated,
23 relating to military, emergency management, and veterans affairs, so as to provide for
24 prohibited actions by government official or employee during declared state of emergency;
25 to provide limits upon the emergency powers of the Governor; to provide for civil remedy;
26 to provide for related matters; to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against
30 public order and safety, is amended in Code Section 16-11-127, relating to carrying weapons
31 in unauthorized locations, by revising subsection (a), paragraph (4) of subsection (b), and
32 subsection (e) as follows:

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

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

36 (2) 'Government building' means:

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

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

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

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

47 (4) 'Parking facility' means real property owned or leased by a government entity,
48 courthouse, jail, or prison, ~~or place of worship~~ that has been designated by such
49 government entity, courthouse, jail, or prison, ~~or place of worship~~ for the parking of
50 motor vehicles at a government building or at such courthouse, jail, or prison, ~~or place~~
51 ~~of worship."~~

52 ~~"(4) In a place of worship, unless the governing body or authority of the place of worship~~
53 ~~permits the carrying of weapons or long guns by license holders Reserved;"~~

54 ~~"(e)(1)~~ A license holder shall be authorized to carry a weapon in a government building
55 when the government building is open for business and where ingress into such building
56 is not restricted or screened by security personnel. A license holder who enters or attempts
57 to enter a government building carrying a weapon where ingress is restricted or screened
58 by security personnel shall be guilty of a misdemeanor if at least one member of such
59 security personnel is certified as a peace officer pursuant to Chapter 8 of Title 35; provided,
60 however, that a license holder who immediately exits such building or immediately leaves
61 such location upon notification of his or her failure to clear security due to the carrying of
62 a weapon shall not be guilty of violating this subsection or paragraph (1) of subsection (b)
63 of this Code section. A person who is not a license holder and who attempts to enter a
64 government building carrying a weapon shall be guilty of a misdemeanor.

65 ~~(2) Any license holder who violates subsection (b) of this Code section in a place of~~
66 ~~worship shall not be arrested but shall be fined not more than \$100.00. Any person who~~
67 ~~is not a license holder who violates subsection (b) of this Code section in a place of~~
68 ~~worship shall be punished as for a misdemeanor."~~

69

SECTION 2.

70 Said chapter is further amended in Code Section 16-11-129, relating to weapons carry
71 license, gun safety information, temporary renewal permit, mandamus, and verification of
72 license, by adding a new paragraph to subsection (a) and revising subparagraph (b)(2)(J) and
73 subsection (k) as follows:

74 "(4) The judge of the probate court shall be authorized to implement online application
75 processes for weapons carry licenses and renewal licenses. The probate court shall also
76 be authorized to accept a weapons carry license or renewal license application by
77 first-class mail."

78 "(J) Except as provided for in subsection (b.1) of this Code section, any person who has
79 been involuntarily hospitalized as an inpatient in any mental hospital or alcohol or drug
80 treatment center within the five years immediately preceding the application. The judge
81 of the probate court may require any applicant to sign a waiver authorizing any mental
82 hospital or treatment center to inform the judge whether or not the applicant has been
83 an inpatient in any such facility in the last five years and authorizing the superintendent
84 of such facility to make to the judge a recommendation regarding whether the applicant
85 is a threat to the safety of others and whether a license to carry a weapon should be
86 issued. When such a waiver is required by the judge, the applicant shall pay a fee of
87 \$3.00 for reimbursement of the cost of making such a report by the mental health
88 hospital, alcohol or drug treatment center, or the Department of Behavioral Health and
89 Developmental Disabilities, which the judge shall remit to the hospital, center, or
90 department. The judge shall keep any such hospitalization or treatment information
91 confidential. It shall be at the discretion of the judge, considering the circumstances
92 surrounding the hospitalization and the recommendation of the superintendent of the
93 hospital or treatment center where the individual was a patient, to issue the weapons
94 carry license or renewal license;"

95 "(k) **Data base prohibition.**

96 (1) As used in this subsection, the term 'multijurisdictional' means between or among
97 more than one department, agency, or office.

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

100 (3) Any person aggrieved by a violation of this subsection may bring an action for relief.
101 Such person who proves by a preponderance of the evidence that he or she is or was
102 contained in such a multijurisdictional data base shall be entitled to obtain, in addition to
103 appropriate declaratory or injunctive relief:

104 (A) One hundred dollars or actual damages, whichever is greater; and

105 (B) Expenses of litigation, including costs and reasonable attorney's fees."

106

SECTION 3.

107 Said chapter is further amended by revising subsection (e) of Code Section 16-11-173,
108 relating to legislative findings, preemption of local regulation and lawsuits, and exceptions,
109 as follows:

110 "(e)(1) Except as provided for in paragraph (2) of this subsection, nothing ~~Nothing~~
111 contained in this Code section shall prohibit municipalities, ~~or counties,~~ or consolidated
112 governments, by ordinance or resolution, from reasonably limiting or prohibiting the
113 discharge of firearms within the boundaries of the municipal corporation, ~~or county,~~ or
114 consolidated government.

115 (2) No municipality, county, or consolidated government shall prohibit the discharge of
116 firearms on a parcel of land that is ten acres or more in size provided that the owner or
117 lawful occupants of such land consent to such discharging of firearms. ~~Nothing in this~~
118 paragraph shall preempt a zoning ordinance which prohibits or limits commercial
119 shooting ranges or other commercial activity upon such parcel."

SECTION 4.

120
121 Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
122 disposition of property seized, is amended by revising subsection (g) of Code
123 Section 17-5-54, relating to definitions and disposition of personal property in custody of law
124 enforcement agency, as follows:

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

131 (2) Otherwise, an unclaimed firearm:

132 (A) Possessed by a municipal corporation shall be disposed of as provided for in Code
133 Section 36-37-6; provided, however, that municipal corporations shall not have the
134 right to reject any bids or to cancel any proposed sale of such firearms, and all sales
135 ~~shall may~~ be to ~~persons~~ any person, but the transfer of such firearms shall only be to
136 persons, specified by the winning bidders, who are licensed as firearms collectors,
137 dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et
138 seq., and who are authorized to receive such firearms under the terms of such license.
139 The municipal corporation shall dispose of all such firearms at least once every 12
140 months during any time in which the municipal corporation has an inventory of five or
141 more firearms. If a municipal corporation does not dispose of such firearms as required
142 by this Code section, a person interested in acquiring any such firearms may bring an
143 action in mandamus or other legal proceeding to compel the disposition. A person who
144 has been unable to acquire a firearm because of the municipal corporation's failure to
145 dispose of the firearm pursuant to this Code section shall, in addition to any other relief
146 to which he or she is entitled, be entitled to actual damages or \$100.00, whichever is

147 greater. A prevailing plaintiff in such an action shall be entitled to his or her costs,
148 including reasonable attorney's fees; or
149 (B) Possessed by the state or a political subdivision other than a municipal corporation,
150 shall be disposed of by sale at public auction. While any person may bid at auction, the
151 transfer of such firearms shall only be to persons, specified by the winning bidders, who
152 are licensed as firearms collectors, dealers, importers, or manufacturers under the
153 provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such
154 firearms under the terms of such license. Auctions required by this subparagraph may
155 occur online on a rolling basis or at live events, but in no event shall such auctions
156 occur less frequently than once every 12 months during any time in which the political
157 subdivision or state custodial agency has an inventory of five or more saleable firearms.
158 If the state or a political subdivision other than a municipal corporation does not
159 dispose of such firearms as required by this Code section, a person interested in
160 acquiring any such firearms may bring an action in mandamus or other legal proceeding
161 to compel the disposition. A person who has been unable to acquire a firearm because
162 of the state or such political subdivision's failure to dispose of the firearm pursuant to
163 this Code section shall, in addition to any other relief to which he or she is entitled, be
164 entitled to actual damages or \$100.00, whichever is greater. A prevailing plaintiff in
165 such an action shall be entitled to his or her costs, including reasonable attorney's fees.
166 (3) If no bids from eligible recipients are received within six months from when bidding
167 opened on a firearm offered for sale pursuant to paragraph (2) of this subsection, the
168 firearm shall be transferred to the Division of Forensic Sciences of the Georgia Bureau
169 of Investigation, a municipal or county law enforcement forensic laboratory for training
170 or experimental purposes, or be destroyed."

171 **SECTION 5.**

172 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and
173 dissemination of criminal records to private persons and businesses, resulting responsibility
174 and liability of issuing center, and provision of certain information to the FBI in conjunction
175 with the National Instant Criminal Background Check System, is amended by revising
176 subsection (e) as follows:

177 "(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal
178 history records, wanted person records, and involuntary hospitalization records
179 information to the Federal Bureau of Investigation or any successor agency for the sole
180 purpose of inclusion in ~~conjunction with~~ the National Instant Criminal Background
181 Check System in accordance with the federal Brady Handgun Violence Prevention Act,
182 18 U.S.C. Section 921, et seq.; provided, however, that, with respect to involuntary
183 hospitalization records, the center shall forward only such information as is necessary to
184 identify such persons.

185 (2) The records of the ~~Georgia Crime Information Center~~ center shall include
186 information as to whether a person has been involuntarily hospitalized. Notwithstanding
187 any other provisions of law and in order to carry out the provisions of this Code section
188 and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be
189 provided such information and no other mental health information from the involuntary
190 hospitalization records of the probate courts concerning persons involuntarily
191 hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges
192 Training Council and the ~~Georgia Bureau of Investigation~~ bureau to preserve the
193 confidentiality of patients' rights in all other respects. Further, notwithstanding any other
194 provisions of law and in order to carry out the provisions of this Code section and Code
195 Section 16-11-172, the center shall be provided information as to whether a person has
196 been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity
197 at the time of the crime, has been involuntarily hospitalized, or both from the records of

198 the clerks of the superior courts concerning persons involuntarily hospitalized after
199 March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of
200 Georgia and the ~~Georgia Bureau of Investigation~~ bureau to preserve the confidentiality
201 of patients' rights in all other respects. ~~After five years have elapsed from the date that~~
202 ~~a person's involuntary hospitalization information has been received by the Georgia~~
203 ~~Crime Information Center, the center shall purge its records of such information as soon~~
204 ~~as practicable and in any event purge such records within 30 days after the expiration of~~
205 ~~such five-year period.~~

206 (2.1)(A) When a person's mental health information has been submitted to the center
207 pursuant to paragraph (2) of this subsection or when a person has been adjudicated as
208 described in 18 U.S.C. Section 922 (g)(4), such person may petition the court in which
209 such proceedings occurred for relief from the disabilities imposed pursuant to 18 U.S.C.
210 Section 922 (d)(4) and (g)(4) after five years from the date of adjudication or discharge
211 from hospitalization. A copy of such petition for relief shall be served upon the
212 opposing civil party or the prosecuting attorney, as the case may be, who appeared in
213 the underlying case or their successors. Within 60 days of the receipt of such petition,
214 such court shall hold a hearing on such petition; provided, however, that such time
215 period may be extended for good cause as determined by the court. The prosecuting
216 attorney may represent the interests of the state at such hearing.

217 (B) At the hearing provided for under this paragraph, the court shall receive and
218 consider evidence concerning:

219 (i) The circumstances which caused the petitioner's hospitalization or adjudication
220 and resulting firearm disabilities from which relief is sought;

221 (ii) The petitioner's mental health and criminal history records, if any. The court
222 shall require the petitioner to sign a waiver authorizing the custodian of the records
223 of any hospital where such petitioner received mental health treatment during such
224 hospitalization or any other facility or outpatient treatment center where he or she has

225 received mental health treatment since such hospitalization to release such records to
226 the court. The court shall keep such hospitalization and treatment records confidential
227 to the maximum extent possible;

228 (iii) The petitioner's reputation, which shall be developed at a minimum through
229 character witness statements, testimony, or other character evidence; and

230 (iv) Changes in the petitioner's condition or circumstances since the hospitalization
231 or adjudication relevant to the relief sought.

232 (C)(i) The court shall issue a written order of its decision on such petition filed under
233 this paragraph no later than 30 days after the hearing.

234 (ii) The court shall grant such petition if it finds by a preponderance of the evidence
235 that the petitioner's record and reputation are such that the petitioner will not likely
236 act in a manner dangerous to public safety, that granting the relief will not be contrary
237 to the public interest, and that granting the relief is not otherwise inconsistent with the
238 standards for the issuance of a weapons carry license as provided for in subsection
239 (b.1) of Code Section 16-11-129.

240 (iii) If the court grants such petition, the clerk of court shall report such order to the
241 center immediately, but in no case later than ten business days after the date of such
242 order, and the center shall purge and remove such record that is the subject of the
243 order from any data base which the center makes available to the National Instant
244 Criminal Background Check System and notify the United States Attorney General
245 that the basis for such record being made available no longer is applicable, as soon as
246 practicable but not later than 30 days after receipt of such order.

247 (2.2)(A) A record shall be kept of hearings conducted pursuant to paragraph (2.1) of
248 this subsection. Such record shall be exempt from disclosure under Article 4 of
249 Chapter 18 of Title 50.

250 (B) Any appeal of the court's ruling filed pursuant to paragraph (2.1) of this subsection
251 shall be as provided for by the laws governing the appeal of decisions from such court;

252 provided, however, that, any such appeal shall be a de novo review. No person whose
253 petition was denied and upheld upon appeal shall file a second petition pursuant to
254 paragraph (2.1) of this subsection within three years of the filing date of the initial
255 denial.

256 (C) Information received by a prosecuting attorney pursuant to paragraph (2.1) of this
257 subsection shall not be used against the person who is the subject of the petition in any
258 other case or context unless such information is obtained in such other case or context
259 by other rules of evidence or discovery.

260 (3)(A) The records of the center shall include information as to whether a person has
261 been involuntarily hospitalized. In order to carry out the provisions of Code
262 Section 16-11-129, the center shall be provided such information and no other mental
263 health information from the records of the probate and superior courts ordering persons
264 to be involuntarily hospitalized. With respect to probate court records, such
265 information shall be provided in a manner agreed upon by the Probate Judges Training
266 Council and the bureau. With respect to superior court records, such information shall
267 be provided in a manner agreed upon by The Council of Superior Court Clerks of
268 Georgia and the bureau. Such records shall be provided in a manner so as to preserve
269 the confidentiality of patients' rights in all other respects.

270 (B) In order to carry out the provisions of Code Section 16-11-129, the center shall be
271 provided information as to whether a person has been adjudicated mentally incompetent
272 to stand trial or has been found not guilty by reason of insanity at the time of the crime.
273 The clerk of court shall report such information to the center immediately but in no case
274 later than ten days after such adjudication of mental incompetence or finding of not
275 guilty by reason of insanity."

276

SECTION 6.

277 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in
278 Code Section 37-3-62, relating to hearing on petition for court ordered evaluation, recipients
279 of hearing notice, appointment of representatives, contents of notice, patient's right to
280 counsel, waiver of hearing, and procedure upon issuance of order for evaluation, by revising
281 subsection (b) as follows:

282 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the
283 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall
284 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility
285 designated by the department to admit persons ordered by that court to be evaluated. The
286 court shall provide notification to any person admitted to a facility under this subsection
287 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such
288 admission. The court shall retain jurisdiction of the case for purposes of Code
289 Section 35-3-34."

290

SECTION 7.

291 Said title is further amended in Code Section 37-7-62, relating to hearing on petition for court
292 ordered evaluation, notice, appointment of representatives, patient's right to counsel, waiver
293 of hearing by patient, and procedure upon issuance of order for evaluation, by revising
294 subsection (b) as follows:

295 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the
296 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall
297 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility
298 designated by the department to admit persons ordered by that court to be evaluated. The
299 court shall provide notification to any person admitted to a facility under this subsection
300 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such

301 admission. The court shall retain jurisdiction of the case for purposes of Code
 302 Section 35-3-34."

303 **SECTION 8.**

304 Title 38 of the Official Code of Georgia Annotated, relating to military, emergency
 305 management, and veterans affairs, is amended by revising Code Section 38-3-37, relating to
 306 prohibited actions by government official or employee during declared state of emergency,
 307 as follows:

308 "38-3-37.

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

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

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

314 (3) 'Weapon' shall have the same meaning as set forth in Code Section ~~16-11-125.1~~
 315 16-11-127.1.

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

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

324 (2) Prohibit possession of any firearm, ~~or~~ ammunition or any component thereof,
 325 ammunition reloading equipment and supplies, or weapon, or promulgate any rule,
 326 regulation, or order prohibiting possession of ~~any firearm or ammunition or any~~

327 ~~component thereof if such~~ if possession was not otherwise prohibited by law at the time
328 immediately prior to the declaration of a state of emergency;

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

332 or

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

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

340 (6) Refuse to accept an application for a weapons carry license which has been properly
341 submitted in accordance with Code Section 16-11-129 if the building or courthouse is
342 otherwise open to the public; provided, however, that no probate judge shall be
343 responsible for any delay or closure caused by circumstances or actions outside of the
344 control of such probate judge;

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

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

353 ~~(4)~~(9) Require the registration of any firearm.

354 (c) Any individual who is a lawful resident of the United States, is authorized to possess
355 a firearm under the laws of this state, and is or has been subject to an act, rule, regulation,
356 or order in violation of this Code section may bring an action in mandamus or other legal
357 proceeding against a public entity or public officer in his or her official capacity to obtain
358 declaratory or injunctive relief. A prevailing plaintiff in such action shall be entitled to
359 recover his or her costs in such action, including reasonable attorney's fees."

360 **SECTION 9.**

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

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

368 **SECTION 10.**

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