

Summary of H.B. 60: The Safe Carry Protection Act

This bill amends Titles 16 (Crimes and Offenses), 20 (Education), 38 (Military, Emergency Management, and Veterans Affairs) and 43 (Professions and Businesses). The bill allows weapons carry license holders to carry loaded guns into bars and the public area of airports. It authorizes school boards to authorize staff members to carry guns at schools. It also strengthens the “Stand Your Ground” defense.

Specific statutory revisions:

PART I

Section 1-1.

Provides for the short title, “Safe Carry Protection Act.”

Section 1-2.

O.C.G.A. § 8-3-202: Adds subparagraph (8) to make it unlawful to require, as a condition of tenancy in public housing, any prohibition or restriction of any lawful possession of a firearm within an individual dwelling unless required by federal law or regulation.

Section 1-2A.

O.C.G.A. § 27-3-4: Current law prohibits the use of silencers when hunting. The bill expands the prohibition to include suppressors. However, it authorizes use of both silencers and suppressors for hunting on private property and on public lands designated by the Department of Natural Resources.

Section 1-3

O.C.G.A. § 16-3-24.2 (Immunity from prosecution; exception): Current law immunizes a person who uses force in accordance with § 16-3-21, -23, -23.1 and -24 from prosecution, unless in the use of deadly force the person utilizes a weapon the carrying or possession of which is unlawful under Part 2 (Possession of Dangerous Weapons) or 3 (Carrying and Possession of Firearms) of Article 4 (Dangerous Instrumentalities and Practices) of Chapter 11 (Offenses Against Public Order and Safety) of Title 16. The bill removes a violation of Part 3 as grounds for not providing immunity from criminal prosecution.

Section 1-4

O.C.G.A. § 16-11-126 (Having or carrying handguns, long guns, or other weapons; license requirement; exceptions for homes, motor vehicles, and other locations and conditions; penalties for violations): Changes subsection (d) to add the word “private” before “property.” Changes right of private property owners to “forbid possession of a weapon or long gun on their property” to “right to exclude or eject a person who is in possession of a weapon or long gun on their

private property,” in accordance with the trespass statute. The right to have a firearm in a public or private employer’s parking lot is still controlled by § 16-11-135.

Section 1-5

O.C.G.A. § 16-11-127 (Carrying weapons in unauthorized locations; penalty): Deletes “bar” as one of the enumerated locations where carrying a weapon or long gun is not authorized, even by license holders. Allows the governing body of a place of worship to permit the carrying of weapons and long guns by license holders.

Adds new subsection (e):

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

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

Section 1-6

O.C.G.A. § 16-11-127.1 (Carrying weapons within school safety zones, at school functions, or on school property): Adds definitions for “bus or other transportation furnished by a school” and “school function.” Subsection (c) sets forth exceptions to subsection (b)’s prohibition on the carrying or possession of weapons in schools and on school transportation. Subparagraph (6) in subsection (c) has been loosened to allow school officials to authorize individuals to possess weapons “within a school safety zone, at a school function, or on a bus or other transportation furnished by a school,” without the current requirement that the weapon’s possession be “part of any activity being conducted at a school....”

Subparagraph (6) retains the requirement that the authorization “specify the weapon or weapons which have been authorized and the time period during which the authorization is valid.”

Section 1-7

O.C.G.A. § 16-11-129 (License to carry weapon; temporary renewal permit; mandamus): Under subsection (b) (licensing exceptions), subparagraph (1) changes the definition of “convicted” to “an adjudication of guilt,” and subparagraph (3) concerning first offender treatment is deleted

accordingly. “Convicted” “shall not include an order of discharge and exoneration pursuant to Article 3 of Chapter 8 of Title 42.” (Probation of First Offenders; Probation; Penal Institutions) Subparagraph (2) of subsection (b) provides an exception to the requirement that a license holder be at least 21 years of age, for people who are over age 18 and have completed basic training in the armed forces.

Subparagraph (2)’s list of people to whom a license may not be issued is changed by adding the words “within three years of the date of his or her application” after the words “Any person who has had his or her weapons carry license revoked pursuant to subsection (e) of this Code section.” Subsection (e) is “Revocation, loss, or damage to license.” Subparagraph (2) is further changed in (H) by deleting people who have been convicted of pointing a gun or pistol at another person from the list of people who cannot be issued a license.

(J) currently prohibits issuance of a license to people who have been an inpatient in a mental hospital, or alcohol and drug treatment center, within five years of applying for a license. The new language makes an exception for people seeking relief from the licensing exceptions under the new (b.1).

The amended subparagraph (2) adds the following language to the list of people to whom a license may not be issued:

“(K) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated mentally incompetent to stand trial; or

(L) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Chapter 7 of Title 17.”

A new (b.1) (Petitions for relief from certain licensing exceptions) reads as follows:

(b.1) Petitions for relief from certain licensing exceptions.

“(1) Persons provided for under subparagraphs (b)(2)(J), (b)(2)(K), and (b)(2)(L) of this Code section may petition the court in which such adjudication, hospitalization, or treatment proceedings, if any, under Chapter 3 or 7 of Title 37 occurred for relief. A copy of such petition for relief shall be served as notice upon the opposing civil party or the prosecuting attorney for the state, as the case may be, or their successors, who appeared in the underlying case. Within 30 days of the receipt of such petition, such court shall hold a hearing on such petition for relief. Such prosecuting attorney for the state may represent the interests of the state at such hearing.

(2) At the hearing provided for under paragraph (1) of this subsection, the court shall receive and consider evidence in a closed proceeding concerning:

(A) The circumstances which caused the person to be subject to subparagraph (b)(2)(J), (b)(2)(K), or (b)(2)(L) of this Code section;

(B) The person's mental health and criminal history records, if any. The judge of such court may require any such person to sign a waiver authorizing the superintendent of any mental hospital or treatment center to make to the judge a recommendation regarding whether such person is a threat to the safety of others. When such a waiver is required by the judge, the applicant shall pay a fee of \$3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the

Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the hospital, center, or department;

(C) The person's reputation which shall be established through character witness statements, testimony, or other character evidence; and

(D) Changes in the person's condition or circumstances since such adjudication, hospitalization, or treatment proceedings under Chapter 3 or 7 of Title 37. The judge shall issue an order of his or her decision no later than 30 days after the hearing.

(3) The court shall grant the petition for relief if such court finds by a preponderance of the evidence that the person will not likely act in a manner dangerous to public safety in carrying a weapon and that granting the relief will not be contrary to the public interest. A record shall be kept of the hearing; provided, however, that such records shall remain confidential and be disclosed only to a court or to the parties in the event of an appeal. Any appeal of the court's ruling on the petition for relief shall be de novo review.

(4) If the court grants such person's petition for relief, the applicable subparagraph (b)(2)(J), (b)(2)(K), or (b)(2)(L) of this Code section shall not apply to such person in his or her application for a weapons carry license or renewal; provided, however, that such person shall comply with all other requirements for the issuance of a weapons carry license or renewal license. The clerk of such court shall report such order to the Georgia Crime Information Center immediately, but in no case later than ten business days after the date of such order.

(5) A person may petition for relief under this subsection not more than once every two years. In the case of a person who has been hospitalized as an inpatient, such person shall not petition for relief prior to being discharged from such treatment.

Subsection (c) removes the fingerprinting requirement for applicants seeking temporary renewal licenses and renewal licenses.

Subsection (d) changes “five days” to “five business days” as the time requirement for probate court judges to request a fingerprint based criminal history records check and to direct the law enforcement agency to conduct a background check, after they receive a license application or request for a license renewal. It also deletes the requirement that the law enforcement agency return the “blank license form with fingerprint thereon” when it returns the application to the probate judge.

Paragraph (3) of subsection (f)(Weapons carry license specifications) mandates The Council of Probate Court Judges of Georgia use the physical characteristics for licenses set forth in paragraph (2), which is currently lettered as paragraph (A), to create specifications for weapons carry licenses.

HB 60 adds the following language to subsection (j)(Applicant may seek relief):

“When an applicant is otherwise denied a license, temporary renewal license, or renewal license and contends that he or she is qualified to be issued a license, temporary renewal license, or renewal license, the applicant may bring an action in mandamus or other legal proceeding in order to obtain such license. Additionally, the applicant may request a hearing before the judge

of the probate court relative to the applicant's fitness to be issued such license. Upon the issuance of a denial, the judge of the probate court shall inform the applicant of his or her rights pursuant to this subsection.”

The bill adds subsection (k) to § 16-11-129, prohibiting any person or entity from creating a multijurisdictional data base of license holders.

New subsection (l) authorizes probate court judges or their designees “to verify the legitimacy and validity of a weapons carry license to a license holder, pursuant to a subpoena or court order, or for public safety purposes, but shall not be authorized to provide any further information regarding license holders.”

Section 1-8

O.C.G.A. § 16-11-130 (Exemptions from Code Sections 16-11-126 through 16-11-127.2):

Changes the current exemption language for judges in paragraph (12) to:

“State and federal judges, judges of probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, and permanent part-time judges of municipal and city courts.”

It also adds two new paragraphs:

(12.1) Former state and federal judges, judges of probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, and permanent part-time judges of municipal courts who are retired from their respective offices, provided that such judge would otherwise be qualified to be issued a weapons carry license;

(12.2) Former state and federal judges, judges of probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, and permanent part-time judges of municipal courts who are no longer serving in their respective office, provided that he or she served as such judge for more than 24 months and provided, further, that such judge would otherwise be qualified to be issued a weapons carry license;”

Section 1-9

Adds two new code sections to Part 3 (Carrying and Possession of Firearms) of Article 4 (Dangerous Instrumentalities and Practices) of Chapter 11 (Offenses Against Public Order and Safety) of Title 16 (Crimes and Offenses).

O.C.G.A. § 16-11-130.1: Subsection (a) defines “bus or other transportation furnished by a school,” “school function,” “school safety zone,” and “weapon.”

Subsection (b): Sets forth requirements for policies of local boards of education that authorize certain personnel to carry weapons at school and on school transportation.

Subsection (c): Mandates personnel selected to carry weapons within a school safety zone, at a school function or on school transportation be license holders. Mandates the local board of education conduct an annual criminal background check of such personnel to ensure they are qualified to be license holders.

Subsection (d): Ensures school personnel are not required to possess or carry weapons at a school.

Subsection (e): Makes the local board of education responsible for costs associated with approving personnel to carry weapons at schools.

Subsection (f): Exempts from disclosure documents and meetings pertaining to school personnel who are approved to carry weapons at schools and on school transportation.

O.C.G.A. § 16-11-130.2 prohibits carrying weapons in the restricted access area of commercial airports, but allows license holders to carry weapons in airport parking lots and areas of terminals outside of screening checkpoints. Makes violation of the code section a misdemeanor offense by people who are not license holders. License holders who are notified at a screening checkpoint that they are in possession of a weapon, and who then leave the restricted area and complete the federally required transportation security screening procedures, will not be guilty of violating the code section. It further preempts all local laws in conflict with the code section.

Section 1-10

Adds two new code sections to Article 4.

O.C.G.A. § 16-11-137 (a) requires license holders to have their license in their possession when carrying a weapon, unless exempt from having a license pursuant to § 16-11-130 (Exemptions from Code Sections 16-11-126 through 16-11-127.2) or § 16-11-127.1 (c)(Carrying weapons within school safety zones, at school functions, or on school property). People who are exempt from having a license must have proof of their exemption in their possession.

Subsection (b) prohibits detaining a person carrying a weapon for the sole purpose of investigating whether or not the person has a weapons carry license.

Subsection (c) limits the fine for violating the code section to \$10.00 where the offender produces in court proof of an exemption or a license that was valid at the time of arrest.

O.C.G.A. § 16-11-138 provides the defense of self or others in Article 2 (Justification and Excuse) of Chapter 3 of Title 16 “shall be an absolute defense to any violation” of Part 3 (Carrying and Possession of Firearms).”

Section 1-11

O.C.G.A. § 16-11-173 (Legislative findings and preemption of local regulation and lawsuits; exceptions): Expands the code section to cover “other weapons,” in addition to firearms.

Subsection (c) mandates that sheriffs, police chiefs, the commanding officers of law enforcement agencies, district attorneys, and solicitors-general “regulate and determine the possession,

carrying, and transportation of firearms and other weapons by employees” under their supervision.”

New subsection (g) creates a right of action for any “person aggrieved as a result of a violation of this Code Section against the person who caused such aggrievement.” It provides for attorney’s fees and litigation expenses for the aggrieved person, and sets forth allowable damages and equitable relief.

Section 1-12

Adds a code section to Part 2 (Transportation Passenger Safety) of Article 4 (Offenses Against Public Transportation) of Chapter 12 (Offenses Against Public Health and Morals) of Title 16 (Crimes and Offenses).

O.C.G.A. § 16-12-129: Makes defense of self or others, as provided by Article 2 of Chapter 3 of Title 16, an absolute defense to any violation under Part 2 of Article 4 of Chapter 12 of Title 16.

Section 1-13

O.C.G.A. § 35-3-34 (Disclosure and dissemination of criminal records to private persons and businesses, resulting responsibility and liability of issuing center, provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System): Adds a new paragraph to Chapter 3’s (Georgia Bureau of Investigation) § 35-3-34 (e) that reads:

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

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

Section 1-14

Repeals Chapter 16 (Firearms Dealers) of Title 43 (Professions and Businesses).

PART II

Section 2-2

O.C.G.A. § 38-3-37: Prohibits state officials and employees from seizing, or authorizing the seizure of, any firearm or ammunition during a state of emergency, where the firearm or ammunition was not prohibited prior to the declaration of a state of emergency. Prohibits state officials and employees from prohibiting possession of firearms and ammunition that were legal immediately prior to the declaration of a state of emergency. Prohibits state officials and employees from requiring the registration of firearms.

Section 2-3

O.C.G.A. § 38-3-51 (Emergency powers of Governor; termination of emergency; limitations in emergency; immunity): Revises paragraph (8) of subsection (d) to remove firearms from the list of items the sale or transporting of which the governor may suspend during a state of emergency.

PART III

Sections 3-1 through 3-5

Revises language in O.C.G.A. §§ 16-5-21, 16-5-24, 16-12-1, 20-2-1180 and 20-2-1185 to comply with the changes to definitions in O.C.G.A. § 16-11-127.1.

Section 3-6

O.C.G.A. § 43-38-10 (Permits to carry firearms; proficiency requirement; exemption from specified laws; denial, refusal to renew, and suspension of permits; effect of license suspension and restoration): Deletes subsection (a)'s age requirement of 21 years to be granted a firearms permit by the Georgia Board of Private Detective and Security Agencies. Adds the requirement that a person be a license holder as defined in § 16-11-125.1 to the other requirements for being granted a license by the Board.