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## Offenses Against Public Order and Safety HB 60

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## CRIMES AND OFFENSES

*Offenses Against Public Order and Safety: Amend Section 202 of Article 4 of Chapter 3 of Title 8, Part 1 of Article 1 of Chapter 3 of Title 27, Article 2 of Chapter 3, Article 4 of Chapter 11, and Part 2 of Article 4 of Chapter 12 of Title 16, and Section 34 of Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, Relating to Unlawful Practices in Selling or Renting Dwellings and Exceptions, General Provisions Regarding Hunting, Justification and Excuse, Dangerous Instrumentalities and Practices, Transportation Passenger Safety, and Disclosure and Dissemination of Criminal Records to Private Persons and Businesses, Resulting Responsibility and Liability of Issuing Center, and Provision of Certain Information to the FBI in Conjunction with the National Instant Criminal Background Check System, Respectively, so as to Change Provisions Relating to Carrying Weapons and the Issuance of Weapons Carry Licenses; Provide for a Short Title; Authorize Hunting Using a Firearm Silencer or Suppressor under Certain Circumstances; Provide for Penalties for Improper Use; Provide that Persons who Use Threats, Force, or Deadly Force in Accordance with Sections 21, 23, 23.1, or 24 of Article 2 of Chapter 3 of Title 16 Shall be Immune from Criminal Prosecution under Part 3 of Article 4 of Chapter 11 of Title 16; Change Provisions Relating to Carrying Weapons in Unauthorized Locations; Provide for and Change Definitions; Change Provisions Relating to Carrying Weapons within Certain School Safety Zones and at School Functions; Change Provisions Relating to Exemptions for Carrying Weapons within School Safety Zones; Remove Fingerprinting Requirements for Renewal Licenses; Allow Persons Who Have Had Their Weapons Carry Licenses Revoked to be Eligible to be License Holders under Certain Circumstances; Prohibit the Creation or Maintenance of Data Bases Regarding Persons Issued Weapons Carry Licenses; Provide for Verification of Weapons Carry Licenses; Provide an Exemption from Certain Laws Regarding the Carrying and Possession of Firearms by Certain Judges; Provide for Local Boards of Education to Authorize Personnel to Carry Weapons*

*within School Safety Zones under Certain Circumstances; Provide for the Offense of Unlawfully Carrying a Weapon into a Secure Airport Area; Provide for Weapons Carry Licenses to be Carried and Exhibited on Demand; Provide that Defense of Self or Others is an Absolute Defense to Any Violation Under Part 3 of Article 4 of Chapter 11 and Part 2 of Article 4 of Chapter 12 of Title 16; Change Legislative Findings; Change Provisions Relating to Preemption of Local Regulations; Provide for the Collection and Dissemination of Information Pertinent to Issuing Weapons Carry Licenses; Amend Title 43 of the Official Code of Georgia Annotated, Relating to Professions and Businesses, so as to Repeal State Laws Regarding Firearms Dealers; Amend Chapter 3 of Title 38 of the Official Code of Georgia Annotated, Relating to Emergency Management, so as to Prohibit Certain Limitations Regarding Firearms During a Declared State of Emergency; Provide for Definitions; Change Provisions Relating to Emergency Powers of the Governor; Amend Sections 21 and 24 of Article 2 of Chapter 5 of Title 16, Section 1 of Article 1 of Chapter 12 of Title 16, Sections 1180 and 1185 of Article 27 of Chapter 2 of Title 20, and Section 10 of Chapter 38 of Title 43 of the Official Code of Georgia Annotated, Relating to Aggravated Assault, Aggravated Battery, Contributing to the Delinquency, Unruliness, or Deprivation of a Minor, Loitering upon School Premises or within a School Safety Zone, School Safety Plans, and Private Detectives and Security Agencies Permits to Carry Firearms, Respectively, so as to Correct Cross-References; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes*

## CODE SECTIONS:

O.C.G.A. §§ 8-3-202 (amended);  
 16-3-24.2 (amended); 16-5-21, -24  
 (amended); 16-11-126, -127, -127.1,  
 -129, -130 (amended); -130.1, -130.2,  
 -137, -138 (new); -173 (amended);  
 16-12-1 (amended); -129 (new);  
 20-2-1180, -1185 (amended); 27-3-4  
 (amended); 35-3-34 (amended);  
 38-3-37 (new); -51 (amended);  
 43-16-1, -2, -3, -4, -5, -6, -7, -8, -9, -10,

2014]

LEGISLATIVE REVIEW

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-10.1, -11, -12 (amended); 43-38-10 (amended)  
BILL NUMBER: HB 60  
ACT NUMBER: 604  
GEORGIA LAWS: 2014 Ga. Laws 599  
SUMMARY: The Act expands gun rights by allowing permit holders to carry guns in locations previously prohibited including places of worship, bars, and certain areas inside government buildings and airports and changing criminal penalties for permit holders who violate the Act. The Act also permits, under certain circumstances, teachers and administrators to carry guns in school safety zones, on school buses, and at school functions. Additionally, the Act repeals certain Georgia laws regulating firearms dealers and also amends the qualifications for application of a weapon carry permit and conditions for permit renewal. Further, the Act prohibits, with exceptions, restrictions on guns in individual dwellings. Finally, the Act corrects certain definitions for clarification of cross-references.  
EFFECTIVE DATE: July 1, 2014

### *History*

In response to increasing instances of extreme gun violence,<sup>1</sup> many state legislatures have passed laws altering weapons carry rights of

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1. E.g., Tom Watkins, *Police: FedEx Worker Wounds 6 in Georgia, Then Kills Himself*, CNN (Apr. 30, 2014), <http://www.cnn.com/2014/04/29/justice/georgia-fedex>; Steve Vogel, Sari Horwitz & David A. Fahrenthold, *Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say*, WASH. POST (Dec. 14, 2012), <http://www.washingtonpost.com/politics/sandy-hook-elementary-school->

citizens within their respective jurisdictions. Some laws aim to broaden access and carrying rights,<sup>2</sup> while others attempt to restrict the same.<sup>3</sup> Over the decades, Georgia has restricted the ability of citizens to carry weapons in a number of public forums.<sup>4</sup> In 1870, the General Assembly enacted the Public Gathering Law<sup>5</sup> to restrict the carry of weapons in places such as courts, election precincts, places of worship, and anywhere that would constitute a “public gathering.”<sup>6</sup> Subsequent legislatures relaxed the restrictions to some degree. In 2010, the General Assembly removed the ambiguous “public gathering” language from the law,<sup>7</sup> although ordinary citizens were still prohibited from carrying weapons in specifically identified places.<sup>8</sup> Many citizens who found themselves in these weapons restricted areas believed these laws cause more harm than good.<sup>9</sup> Generally, these individuals supported the removal of the restricted areas to allow people to lawfully and safely carry weapons.<sup>10</sup>

Representative Rick Jasperse (R-11th), author of the omnibus House Bill (HB) 875 that HB 60 subsumed, justifies the Safe Carry

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shooting-leaves-students-staff-dead/2012/12/14/24334570-461e-11e2-8e70-e1993528222d\_story.html; Jennifer Brown, *12 Shot Dead, 58 Wounded in Aurora Movie Theater During Batman Premier*, DENVER POST (July 21, 2012), [http://www.denverpost.com/news/ci\\_21124893/12-shot-dead-58-wounded-aurora-movie-theater](http://www.denverpost.com/news/ci_21124893/12-shot-dead-58-wounded-aurora-movie-theater).

2. See, e.g., OKLA. STAT. ANN. tit. 21, §§ 1290.1–1290.26 (West 2014) (detailing Oklahoma’s Self-Defense Act); TENN. CODE ANN. § 39-17-1313 (West 2014) (allowing anyone to legally carry firearms in a vehicle as long as the vehicle is owned by that person); WIS. STAT. ANN. § 175.30 (West 2014) (permitting citizens to purchase firearms from other states).

3. See, e.g., CAL. PENAL CODE § 32310 (West 2014) (criminalizing the manufacture, import, gift, sale or attempt to sell ammunition magazines capable of holding more than ten rounds of ammunition, punishable as a misdemeanor offense).

4. See Danielle Hudson & Sara Adams, *Crimes and Offenses, Offenses Against Public Safety and Order*, 27 GA. ST. U. L. REV. 131, 132 (2010) (discussing Georgia’s history of criminalizing the carry of deadly weapons in certain public places).

5. See generally 1870 Ga. Laws 421.

6. 1870 Ga. Laws 421, § 1.

7. Compare 2008 Ga. Laws 1199, § 4, at 1201, with 2010 Ga. Laws 963, § 1, at 966 (codified at O.C.G.A. § 16-11-127 (2011)).

8. 2010 Ga. Laws 963, § 1, at 966 (codified at O.C.G.A. § 16-11-127 (2011)). Subject to certain limitations, such places included government buildings, courthouses, jails or prisons, places of worship, mental health facilities, bars, nuclear power plants, and polling places. *Id.*

9. E.g., David Sharpe, *Permit Self-Defense, End Harsh Penalties*, ATLANTA J.-CONST., Mar. 7, 2014, at 16A (“Criminals know students are defenseless, high-value targets. Nearly every student on campus has a smartphone, a laptop and other valuable belongings.”).

10. Rick Jasperse, *HB875: Safeguarding 2nd Amendment Rights*, ATLANTA J.-CONST. (Mar. 15, 2014) (on file with Georgia State University Law Review) (explaining HB 875 “is about safety and responsibility. Georgians have, and deserve, the right to defend themselves, and this bill seeks to protect that right.”).

Protection Act as an attempt to restore Second Amendment rights to citizens who respect the law.<sup>11</sup> The law also seeks to remove duplicative licensing requirements. For example, previous Georgia law required firearms dealers to apply for a license to operate in the State,<sup>12</sup> however, they were already required to undergo a more rigorous federal licensing process.<sup>13</sup> Further, previously fingerprinted weapons carry license holders were required to submit to—and pay for—additional fingerprinting.<sup>14</sup> Representative Jasperse represents many who believed the additional fingerprinting was merely an opportunity to generate additional revenue for the State of Georgia, as applicants were already required to submit to fingerprinting when they submitted their initial application.<sup>15</sup>

But not everybody approves of the changes to these gun laws. Some Georgia citizens and national lobbying groups have urged Georgia to continue to restrict weapons access to certain public places.<sup>16</sup> Other legislators were also opposed to the changes. House Minority Leader Stacey Abrams (D-89th), believed that the removal of the weapons restrictions would “strip[] away a protection but not provid[e] any support to replace that protection.”<sup>17</sup> Her fear, shared with many of the bills skeptics, was that broadening carry rights will

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11. *Id.* (“At its core, the Safe Carry Protection Act is about safeguarding and restoring the Second Amendment rights of law-abiding Georgians.”).

12. *See* O.C.G.A. §§ 43-16-1 to 43-16-12 (2011).

13. *See* 18 U.S.C. § 923 (2012).

14. O.C.G.A. § 16-11-129(c) (2011).

15. *Id.* *See also* Telephone Interview with Rep. Rick Jasperse (R-11th) (July 22, 2014) [hereinafter Jasperse Interview].

16. Nancy Badertscher, *Calling Gun Bill ‘Extreme’ Goes Too Far to Prove*, ATLANTA J.-CONST., Mar. 5, 2014, at 1B (“Among those lobbying to kill the bill is Americans for Responsible Solutions, a national group that former U.S. Rep. Gabby Giffords, D-Ariz., and her husband, retired astronaut Mark Kelly, founded after her near-fatal shooting in January 2011. In a press release and Internet video released Feb. 26, Giffords’ group urged Georgians to appeal to the State Senate and Gov. Nathan Deal to defeat the bill.”); *see also* Nancy Badertscher, *Gun Bill Claim Under Fire*, POLITIFACT (Mar. 5, 2014, 12:00 AM), <http://www.politifact.com/georgia/statements/2014/mar/05/americans-responsible-solutions/gun-bill-claim-under-fire/> (“Other groups also oppose the bill. Area religious leaders, the Georgia chapter of Moms Demand Action for Gun Sense in America, and the Georgia Gun Sense Coalition are among its opponents.”).

17. *See* Telephone Interview with Rep. Stacey Abrams (D-89th) (April 24, 2014) [hereinafter Abrams Interview] (stating “what [proponents] would argue [is], ‘well, that person could bring in a gun anyway, but the reality is that the prohibition against weapons tends to preclude weapons from coming into those spaces because people tend to follow the law . . . . The tendency to follow the law is what we rely on for protection in a lot of these communities, and when you remove even that, you know, prima facie responsibility, you de-facto heightened the likelihood that someone will find themselves in jeopardy.”).

actually increase Georgia's crime levels.<sup>18</sup> Leader Adams further contended that the removal of the restrictions will pose a very difficult question: "what obligation does the state have to balance the interests of gun owners versus those persons who also have the right to be secure in their persons?"<sup>19</sup> In 2013, the House of Representatives attempted to pass a substantially amended Senate bill containing largely the same material.<sup>20</sup> When the Senate disagreed to the amended bill and the House refused to change its position, the two chambers appointed a Conference Committee.<sup>21</sup> While five of the six appointed Conference Committee members reached a consensus, the legislative session ended without the sixth committee member, Senator Cecil Staton (R-18), giving his approval to the consensus.<sup>22</sup> Without unanimous resolution from the Conference Committee, the bill was unable to be presented to Governor Nathan Deal (R) for his signature, and required legislators to take up the issue again in 2014.<sup>23</sup>

HB 60 underwent a substantial transformation from when Representative Doug Holt (R-112th) originally introduced it to create an exception from certain firearms laws for judges who meet specific qualifications.<sup>24</sup> By the end of the legislative session, HB 60 encompassed many of the changes originally attempted by HB 875, which included a more general expansion of Second Amendment rights.<sup>25</sup>

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18. *See id.*

19. *Id.*

20. SB 101 (SCS), 2013 Ga. Gen. Assem.

21. Taylor Bracewell & Jason Allard, *Sale, Use, and Possession of Firearms, Offences Against Public Order and Safety*, 30 GA. ST. U. L. REV. 231, 236 (2013).

22. Jim Galloway, *It's Déjà Vu All Over Again on Campus Carry*, ATLANTA J.-CONST., Mar. 9, 2014, at 1B, available at <http://www.ajc.com/news/news/state-regional-govt-politics/its-deja-vu-all-over-again-on-campus-carry/nd76h/> ("Without Staton's support, the gun bill could go nowhere. And Staton had disappeared from the chamber."). Sen. Staton later acknowledged that he played a large role in stopping the bill in 2013. *Id.*

23. *Id.* ("[A]pproaching the end of the 2014 session with another new House gun bill resting in the bosom of the Senate.").

24. HB 60, as introduced, 2014 Ga. Gen. Assem.

25. Compare 2014 Ga. Laws 599, with HB 875, as introduced, 2014 Ga. Gen. Assem. *See also* discussion *infra*.

*Bill Tracking of HB 875**Consideration and Passage by the House*

Representatives Rick Jasperse, John Meadows (R-5th), Alan Powell (R-32nd), Mandi Ballinger (R-23rd), Dustin Hightower (R-68th) and Jay Roberts (R-155th) sponsored the original HB 875.<sup>26</sup> The House read the bill for the first time on January 31, 2014 and for the second time on February 3, 2014.<sup>27</sup> Speaker of the House, David Ralston (R-7th), assigned the bill to the House Committee on Public Safety and Homeland Security, which favorably reported the bill by committee substitute on February 7, 2014.<sup>28</sup> The House read the bill for the third time on February 18, 2014, and passed the Committee substitute by a vote of 119 to 56.<sup>29</sup>

The Committee substitute made four amendments to the original bill, three of which were proposed by Representative Jasperse.<sup>30</sup> The first amendment restored a portion of the original language from Code section 16-11-127—regarding the definition of a courthouse.<sup>31</sup> The amendment changed “a portion of a building” back to “a building.”<sup>32</sup> The reversion addressed concerns from the Association of County Commissioners of Georgia as well as judges about potential “unintended consequences” of the change in language.<sup>33</sup> The second amendment addressed where the \$100 fine would go if a license holder were found with a weapon on the campus of a postsecondary educational institution.<sup>34</sup> The amendment clarified that

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26. Georgia General Assembly, HB 875, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/display/20132014/HB/875>.

27. State of Georgia Final Composite Sheet, HB 875, May 1, 2014.

28. *Id.*

29. State of Georgia Final Composite Sheet, HB 875, May 1, 2014; Georgia House of Representatives Voting Record, HB 875 (Feb. 18, 2014).

30. Video Recording of House Committee on Public Safety and Homeland Security, Feb. 6, 2014 at 1 hr., 28 min., 45 sec. (remarks by Rep. Rick Jasperse (R-11th)) [hereinafter House Committee Video, Feb. 6, 2014], [http://media.legis.ga.gov/hav/13\\_14/2014/committees/pubSafe/pubSafe020614/EDITED.wmv](http://media.legis.ga.gov/hav/13_14/2014/committees/pubSafe/pubSafe020614/EDITED.wmv)

31. HB 875 (LC 41 0185S), § 1-5, p. 3, ln. 82, 2014 Ga. Gen. Assem.

32. Compare HB 875 (LC 41 0153), § 1-5, p. 3, ln. 86, 2014 Ga. Gen. Assem., with HB 875 (LC 41 0185S), § 1-5, p. 3, ln. 82, 2014 Ga. Gen. Assem.

33. House Committee Video, Feb. 6, 2014, *supra* note 30, at 1 hr., 36 min., 25 sec. (remarks by Rep. Rick Jasperse (R-11th)).

34. House Committee Video, Feb. 6, 2014, *supra* note 30, at 1 hr., 28 min., 55 sec. (remarks by Rep. Rick Jasperse (R-11th)).

“[s]uch fine shall be remitted to the local jurisdiction where the offence occurred.”<sup>35</sup>

The third amendment required the commanding officers of law enforcement agencies to regulate the use of firearms and other weapons by employees under their supervision.<sup>36</sup> The Committee made the amendment in an effort to resolve more potential “unintended consequences” from the bill’s current wording.<sup>37</sup>

The fourth amendment, proposed by Representative Alan Powell, amended language regarding how individuals authorized to carry a weapon in a school safety zone may carry their weapon.<sup>38</sup> The amendment struck the phrase “in a holster” so the amended language reads “shall be carried on the person and not in a purse, briefcase, bag, or similar other accessory which is not secured on the body . . . .”<sup>39</sup> Representative Powell explained that the gun would still have to be “on the person,” but the amendment simply allows for other means by which to secure the weapon on the person of the authorized individual in addition to “in a holster.”<sup>40</sup>

### *Consideration and Passage by the Senate*

Senator Hunter Hill (R-6th) sponsored HB 875 in the Senate.<sup>41</sup> The Senate first read the bill on February 19, 2014.<sup>42</sup> Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Judiciary Non-Civil Committee.<sup>43</sup> The Judiciary Non-Civil Committee favorably reported a Committee substitute on March 13, 2014.<sup>44</sup> That day, the Senate read the bill for the second time.<sup>45</sup>

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35. HB 875 (LC 41 0185S), § 1-6, p. 6, ln. 202, 2014 Ga. Gen. Assem.

36. *Id.* § 1-10, p. 21, ln. 713–16, 2014 Ga. Gen. Assem.

37. House Committee Video, Feb. 6, 2014, *supra* note 30, at 1 hr., 34 min., 50 sec. (remarks by Rep. Alan Powell (R-32nd)) (explaining “[people] had some concerns [the legislature] might have taken out court officials . . . [possibly creating] unintended consequences.”).

38. *Id.* at 1 hr., 37 min., 25 sec.

39. *Compare* HB 875 (LC 41 0153), § 1-9, p. 18, ln. 625–26, 2014 Ga. Gen. Assem., *with* HB 875 (LC 41 0185S), § 1-8, p. 18, ln. 611–16, 2014 Ga. Gen. Assem.

40. House Committee Video, Feb. 6, 2014, *supra* note 30, at 1 hr., 38 min., 10 sec. (Remarks by Rep. Alan Powell (R-32nd)).

41. State of Georgia Final Composite Sheet, HB 875, May 1, 2014.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

In the Judiciary Non-Civil Committee meeting held on March 12, 2014, a motion to amend HB 875 was passed by a vote of 4 to 1.<sup>46</sup> The subsequent motion of “due pass by substitute” passed the Committee by a vote of 4 to 3.<sup>47</sup> According to Representative Jasperse, the Senate amendment to HB 875 basically “stripped the bill.”<sup>48</sup>

### *House Consolidation with HB 60*

The Senate amendment to HB 875, however, never made it to the Senate floor for a vote, as Representatives were already busy consolidating the provisions of HB 875 into HB 60, authored by Representative Holt.<sup>49</sup> On March 11, 2014, Representative Powell motioned from the House floor to agree to the most recent Senate substitute to HB 60 as amended by the House, which included the HB 875 language.<sup>50</sup> The motion carried by a vote of 108 to 54.<sup>51</sup> Representative Jay Roberts then motioned for immediate transmittal of HB 60 as amended by the House, to the Senate.<sup>52</sup>

When HB 60 subsumed HB 875, the language of HB 875 was left entirely intact, with the exception of three changes.<sup>53</sup> First, language was amended to allow local governments to be more flexible in providing security for entrance into their government buildings.<sup>54</sup> Second, language was added to provide a right for individuals who were determined mentally incompetent to challenge such a determination.<sup>55</sup> Finally, the language providing that an individual

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46. *Hearing on HB 875 Before the S. Judiciary Non-Civil Comm.*, 2014 Leg., 152nd Sess. (Ga. Mar. 12, 2014) (on file with Georgia State University Law Review).

47. *Id.*

48. *See* Jasperse Interview, *supra* note 15.

49. *Id.*

50. Video Recording of House Proceedings, Mar. 11, 2014 at 2 hr., 23 min., 15 sec. (remarks by Rep. Alan Powell (R-32nd)) [hereinafter House Video, Mar. 11, 2014], <http://www.gpb.org/lawmakers/2014/day-36>.

51. *Id.* at 2 hr., 28 min., 33 sec; Georgia House of Representatives Voting Record, HB 875 (Mar. 11, 2014).

52. *See* House Video, Mar. 11, 2014, *supra* note 50 at 2 hr., 29 min. (remarks by Rep. Jay Roberts (R-155th)).

53. *See id.* at 2 hr., 25 min., 25 sec. (remarks by Rep. Alan Powell (R-32nd)).

54. *Id.* at 2 hr., 24 min., 51 sec.; *Compare* HB 875 (CSFA), § 1-5, p. 5, ln. 143–58, 2014 Ga. Gen. Assem., with HB 60 (AM 41 0040), § 1-5, p. 5, ln. 147–57, 2014 Ga. Gen. Assem. (on file with Georgia State University Law Review).

55. *Compare* HB 875 (CSFA), § 1-7, p. 12, ln. 404, 2014 Ga. Gen. Assem., with HB 60 (AM 41

who is licensed to carry a weapon would only be fined \$100 for being found in possession of a weapon on a campus of any post-secondary school was removed, returning back to the Code's preexisting language.<sup>56</sup> The House voted to pass these amendments by a vote of 109 to 55.<sup>57</sup>

### *Reconsideration and Passage by Senate*

On March 18, 2014, the Senate agreed to the Senate substitute to HB 60 as amended by the House, with additional amendments by the Senate, by a vote of 37 to 18.<sup>58</sup>

The Senate made five amendments to the newest version of HB 60. The first amendment made corrections to the bill's heading to reflect changes made in the bill.<sup>59</sup> Second, the Senate added language relating to the legal use of silencers and suppressors when hunting on private property with the permission of the landowner.<sup>60</sup> Third, the language regarding lawfully carrying weapons in churches was amended from an "opt-out" provision, to an "opt-in" provision.<sup>61</sup> The fourth amendment added language that provided penalties for violation of the church "opt-in" provision.<sup>62</sup>

Finally, the last amendment added the language: "and completion of federally required transportation security screening procedures" to part of the Code pertaining to recourse for a license holder who has been notified at an airport screening checkpoint that they are in possession of a weapon in violation of the Georgia Code.<sup>63</sup>

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0040), § 1-7, p. 12–13, ln. 405–47, 2014 Ga. Gen. Assem. (on file with Georgia State University Law Review).

56. Compare HB 875 (CSFA), § 1-6, p. 6–7, ln. 194–205, 2014 Ga. Gen. Assem., with O.C.G.A. § 16-11-127.1(b) (Supp. 2014).

57. Georgia House of Representatives Voting Record, HB 875 (Feb. 18, 2014).

58. State of Georgia Final Composite Sheet, HB 60, May 1, 2014.

59. HB 60 (SFA/2), p. 1, ln. 1–5, 2014 Ga. Gen. Assem.

60. *Id.* § 1-2A, p. 1–2, ln. 7–65, 2014 Ga. Gen. Assem.

61. *Id.* § 1-2A, p. 3, ln. 67–89, 2014 Ga. Gen. Assem. Under the "opt-out" provision, churches that did not wish to allow concealed weapons into their churches would have to take the action of "opting-out" of the default law—which would have allowed concealed weapons into churches generally. In the "opt-in" provision, the default law prohibits carrying concealed weapons into churches, and churches who wished to allow properly licensed concealed weapons into their churches would have to take the affirmative step of "opting-in" to that right. See Jasperse Interview, *supra* note 15.

62. HB 60 (SFA/2), § 1-2A, p. 3, ln. 92–95, 2014 Ga. Gen. Assem.

63. *Id.* § 1-2A, p. 3, ln. 97, 2014 Ga. Gen. Assem.

Effectively, a license holder who is found to have a weapon at an airport security checkpoint, immediately leaves the area, and completes the federally required screening procedures, will not be charged with a misdemeanor.<sup>64</sup>

*Reconsideration and Passage by House*

On March 20, 2014, the House agreed to the new Senate amendments to HB 60 by a vote of 112 to 58.<sup>65</sup> The bill was subsequently sent to Governor Nathan Deal (R) on March 26, 2014, and the Governor signed the bill on April 23, 2014.<sup>66</sup>

*The Act*

Section 1-1 titles the bill as the “Safe Carry Protection Act.”<sup>67</sup> Section 1-2 amends Code section 8-3-202 to make unlawful any prohibition or restriction on firearms in public housing if the carrying of such firearm would be otherwise lawful.<sup>68</sup> The Act recognizes that federal prohibitions would still be enforceable.<sup>69</sup>

Section 1-2A amends Code section 27-3-4 to prohibit suppressors for hunting and to provide penalties for violation, as well as recognizing certain exceptions to these restrictions.<sup>70</sup> First, the Act prohibits suppressors—conforming to current prohibitions on the use of silencers—for the purposes of hunting.<sup>71</sup> The Act then excepts from that general prohibition individuals hunting with silencers or suppressors: (a) on private property which they own, (b) on the private property of another who has provided verifiable permission to the person using the silencer or suppressor, and (c) on public lands in areas designated by the Department of Natural Resources.<sup>72</sup> Finally,

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64. 2014 Ga. Laws 599 § 1-9, at 617.

65. State of Georgia Final Composite Sheet, HB 875, May 1, 2014.

66. Georgia General Assembly, HB 60, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/display/20132014/HB/60>.

67. 2014 Ga. Laws 599 § 1-1, at 601.

68. O.C.G.A. § 8-3-202(a) (Supp. 2014).

69. O.C.G.A. § 8-3-202(a)(8) (Supp. 2014).

70. O.C.G.A. § 27-3-4 (Supp. 2014).

71. O.C.G.A. § 27-3-4(a)(9) (Supp. 2014).

72. *Id.*; see also Jasperse Interview, *supra* note 15 (explaining “[i]t’s really a private property issue.”).

persons found in violation of the amended Code section forfeit their hunting license for three years.<sup>73</sup>

Section 1-4 amends Code section 16-11-126 to change the requirements by which private property owners or lessors can keep individuals from lawfully carrying weapons on their premises.<sup>74</sup> Individuals who are eligible for weapons carry licenses may transport firearms in any private passenger vehicle.<sup>75</sup> Previous law allowed private property owners or lessors the ability to forbid such individual from carrying on their property.<sup>76</sup> This Act changes the penalty for private property owners to enforce their weapons-free premises.<sup>77</sup> Instead of generally forbidding the licensed carry of weapons, after receiving notice the owner or lessor may choose to exclude or eject an individual who is in possession of a weapon.<sup>78</sup>

Section 1-5 amends Code section 16-11-127 to expand the ability to lawfully carry weapons in several specific areas where they were previously restricted or unable to do so.<sup>79</sup> First, the Act permits entry into bars—including other privately owned property such as parking facilities provided by the bar—for individuals carrying weapons.<sup>80</sup> Although the owners or lessors may no longer prohibit weapons on their premises without first assuring the bar is in fact a gun-free zone, they are still entitled to exclude or eject an individual carrying weapons once notice is given by the owner or lessor.<sup>81</sup> This language is very similar to other subsections of this Code section, which extend a similar right to all locations in the State that were not specifically listed or exempted by Code section 16-11-127(b).<sup>82</sup> The Act now requires private property owners, or those in legal control of the private property through a lease or agreement, to exclude or eject the individual carrying weapons from the premises instead of forbidding their entry generally.<sup>83</sup>

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73. O.C.G.A. § 27-3-4(b)(2) (Supp. 2014).

74. O.C.G.A. § 16-11-126(d) (Supp. 2014).

75. *Id.*

76. O.C.G.A. § 16-11-126(d) (2011).

77. *See* Jasperse Interview, *supra* note 15.

78. O.C.G.A. § 16-11-126(d) (Supp. 2014); *see also* discussion *infra*.

79. O.C.G.A. § 16-11-127 (Supp. 2014).

80. O.C.G.A. § 16-11-127(c) (Supp. 2014).

81. *Id.*; *see also* discussion *infra*.

82. O.C.G.A. § 16-11-127(c) (2011).

83. O.C.G.A. § 16-11-127(c) (Supp. 2014).

Second, the Act allows individuals to carry weapons into places of worship.<sup>84</sup> Although the Act still prohibits their entry into houses of worship generally, the Act allows the governing body or authority of the place of worship the option to permit the carrying of weapons by license holders within their respective places of worship.<sup>85</sup> Individuals licensed to carry weapons who violate the Act's place of worship provision are subject to a \$100 fine, while unlicensed violators of the same will be charged with a misdemeanor.<sup>86</sup>

Third, the Act extends the right to carry weapons into government buildings with certain specific restrictions.<sup>87</sup> Previously, Georgia law generally prohibited the carrying of weapons into government buildings with some exceptions.<sup>88</sup> This Act allows individuals licensed to carry weapons to gain entry into government buildings as long as they are entering the building during regular working hours and the building's entrance is not restricted or screened by security personnel.<sup>89</sup> The Act also stipulates there should be no violation for a licensed individual who immediately leaves a restricted access government building upon notification that weapons are not to be carried into the particular building.<sup>90</sup> If a non-license holder attempts to enter a government building, regardless of the security measures in place, they shall be charged with a misdemeanor.<sup>91</sup>

Section 1-6 amends Code section 16-11-127.1, addressing individuals' abilities to possess weapons in schools, technical and vocational schools, and colleges.<sup>92</sup> Past versions of this Section detailed certain specific instances of when an individual with a license to carry weapons could carry or possess weapons in areas associated with schools, such as the schools themselves and the surrounding "school safety zone."<sup>93</sup> The Act adheres to previous Code sections in that license holders who violate the provisions of this Code section shall be guilty of a misdemeanor, while unlicensed

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84. O.C.G.A. § 16-11-127(b)(4) (Supp. 2014).

85. *Id.*

86. O.C.G.A. § 16-11-127(e)(2) (Supp. 2014).

87. O.C.G.A. § 16-11-127(e)(1) (Supp. 2014).

88. O.C.G.A. § 16-11-127(b) (2011).

89. O.C.G.A. § 16-11-127(e)(1) (Supp. 2014).

90. *Id.*

91. *Id.*

92. O.C.G.A. § 16-11-127.1 (Supp. 2014).

93. O.C.G.A. § 16-11-127.1(a) (2011).

individuals shall be guilty of a felony.<sup>94</sup> The Act also follows previous versions of this Code section in exempting persons who have written authorization from the school to carry such a weapon on the types of premises associated with schools.<sup>95</sup> Licensed individuals have the ability to keep a weapon on school premises if it is in a locked compartment in a vehicle, in a parked vehicle, or in transit through a school safety zone, all of which the previous version of the Code section permitted.<sup>96</sup>

The Act makes several key changes in Section 1-6 as well. First, the Act extends the application of Code section 16-11-127.1, adding two situations to which the Section applies: on “buses or other transportation furnished by a school”<sup>97</sup> and at “school functions.”<sup>98</sup> The addition of the “buses or other transportation” clause has the effect of extending the ability for properly authorized and licensed individuals to carry a weapon on school-provided transportation so long as they meet the requirements for safe storage.<sup>99</sup> Additionally, while previous versions of this Code section allowed licensed individuals over the age of twenty-one to have a weapon in a locked compartment of their vehicles while dropping off or picking up a student from school or activities located within school safety zones, the Act expands the right for students who are over the age of twenty-one to keep such weapons properly locked in their vehicle while attending school.<sup>100</sup> The Act does not extend this new privilege to any student attending elementary or secondary schools, effectively reserving the right for students enrolled in post-secondary schools.<sup>101</sup>

Section 1-7—arguably the most comprehensive reformation in the Act—amends Code section 16-11-129 to significantly alter provisions relating to the issuance, renewal, and enforcement of weapons carry licenses.<sup>102</sup> The Act first alters the definition of

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94. Compare O.C.G.A. § 16-11-127(b)(1) (2011), with O.C.G.A. § 16-11-127.1(b)(2) (Supp. 2014).

95. O.C.G.A. § 16-11-127.1(c)(6) (Supp. 2014).

96. Compare O.C.G.A. § 16-11-127.1(c)(8) (Supp. 2014), with O.C.G.A. § 16-11-127.1(c)(8) (2011).

97. O.C.G.A. § 16-11-127.1(a)(1) (Supp. 2014).

98. O.C.G.A. § 16-11-127.1(a)(2) (Supp. 2014).

99. O.C.G.A. § 16-11-127.1(c)(6) (Supp. 2014).

100. Compare O.C.G.A. § 16-11-127.1(c)(8) (Supp. 2014), with O.C.G.A. § 16-11-127.1(c)(8) (2011).

101. O.C.G.A. § 16-11-127.1(c) (Supp. 2014).

102. O.C.G.A. § 16-11-129 (Supp. 2014).

“conviction” as used for purposes related to the issuance of weapons carry licenses.<sup>103</sup> The Act’s revised definition includes only an adjudication of guilt.<sup>104</sup> The Act also notes that orders of discharge and exoneration relating to probation for first offenders is not to be included in the definition.<sup>105</sup> Where previous versions of this Code section included provisions regarding first offender eligibility for weapons carry licenses, the Act removes those requirements as well.<sup>106</sup>

Additionally, the Act extends the ability for an individual under the age of twenty-one to apply for a weapons carry license, provided the individual is at least eighteen years of age, provides proof of completion of basic armed forces training, and provides proof of active military service or honorable discharge.<sup>107</sup> The Act also allows individuals whose carry licenses have been previously revoked to apply for new weapons carry licenses, so long as the revocation exceeds three years from the date of application.<sup>108</sup>

Furthermore, the Act adds to the list of individuals who are ineligible for weapons carry licenses: any person who has been adjudicated mentally incompetent to stand trial,<sup>109</sup> and any person who has been adjudicated not guilty by reason of insanity at the time of the crime.<sup>110</sup> While also including a provision, incorporated from the previous version of the Code section regarding ineligibility for weapons carry licenses individuals who were inpatients in a mental hospital or drug or alcohol treatment center within the five years immediately preceding the application,<sup>111</sup> the Act creates a new subsection detailing how to conduct petitions for relief to challenge their inability to receive a permit under any of these three subsections.<sup>112</sup> The Act also builds on previous versions of this Code

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103. O.C.G.A. § 16-11-129(b)(1)(B) (Supp. 2014).

104. *Id.* The previous definition of conviction included “a plea of guilty or a finding of guilt by a court of competent jurisdiction or the acceptance of a plea of nolo contendere.” O.C.G.A. § 16-11-129(b)(1)(B) (2011).

105. O.C.G.A. § 16-11-129(b)(1)(B) (Supp. 2014).

106. *Compare* O.C.G.A. § 16-11-129(b)(3) (2011), *with* O.C.G.A. § 16-11-129(b)(3) (Supp. 2014).

107. O.C.G.A. § 16-11-129(b)(2) (Supp. 2014).

108. O.C.G.A. § 16-11-129(b)(2)(G) (Supp. 2014).

109. O.C.G.A. § 16-11-129(b)(2)(K) (Supp. 2014).

110. O.C.G.A. § 16-11-129(b)(2)(L) (Supp. 2014).

111. O.C.G.A. § 16-11-129(b)(2)(J) (Supp. 2014).

112. O.C.G.A. § 16-11-129(b.1) (Supp. 2014).

section in extending the ability to challenge eligibility rulings for individuals who contend they are qualified to receive such licenses, but fail to receive their licenses or renewal licenses in the requisite time period.<sup>113</sup>

Regarding amendments aimed at enforcement of weapons-carry licenses, the Act modernizes the previous version of the Code section by condensing language describing specifications for weapons carry licenses no longer used by the State.<sup>114</sup> The Act also removes language that requires individuals to keep their licenses in their possession while carrying a weapon.<sup>115</sup> Instead, the Act permits probate court judges to verify the legitimacy of the weapons carry licenses pursuant to subpoena, court order or for public safety, but the judge will not be permitted to provide any further information regarding the license holder.<sup>116</sup> The Act also adds a clause prohibiting any person or entity from creating or maintaining a multijurisdictional database that keeps information regarding persons issued weapons carry licenses.<sup>117</sup>

Finally, the Act exempts applicants seeking any form of renewal for licenses the individual already possesses from being re-fingerprinted.<sup>118</sup> The Act further extends to private vendors the ability to conduct fingerprint screenings.<sup>119</sup>

The Act also amends Code section 16-11-130 to expand the types of judges exempt from various weapons carry laws.<sup>120</sup> The previous version of the Code section only exempted from certain weapons carry laws state and federal trial and appellate judges who were either currently serving or had retired under the State retirement plan.<sup>121</sup> The Act extends those exceptions to all state and federal judges, judges of probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, retired judges that served for more than two years, and permanent part-time judges of municipal and city

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113. Compare O.C.G.A. § 16-11-129(j) (2011), with O.C.G.A. § 16-11-129(b.1)(j) (Supp. 2014).

114. Compare O.C.G.A. § 16-11-129(f)(1) (2011), with O.C.G.A. § 16-11-129(b.1)(f)(1) (Supp. 2014).

115. O.C.G.A. § 16-11-129(e) (Supp. 2014).

116. O.C.G.A. § 16-11-129(l) (Supp. 2014).

117. O.C.G.A. § 16-11-129(k) (Supp. 2014).

118. O.C.G.A. § 16-11-129(c) (Supp. 2014).

119. O.C.G.A. § 16-11-129(c) (Supp. 2014).

120. O.C.G.A. § 16-11-130 (Supp. 2014).

121. O.C.G.A. § 16-11-130(a)(12) (2011).

courts if they are otherwise qualified to receive a weapons carry license.<sup>122</sup>

Section 1-9 adds two new code sections outlining local boards of education procedures for implementing policies approving school personnel to carry weapons, as well as addressing the carry of weapons in commercial service airports.<sup>123</sup> Code section 16-11-130.1 requires local boards of education to adopt certain specific policies regarding how approved personnel shall possess or carry weapons within school safety zones, at school functions, or on transportation furnished by the school.<sup>124</sup> The Act insists that the decision to adopt the policy must be the sole decision of each individual local board of education.<sup>125</sup> Additionally, the personnel designated to possess or carry such a weapon may not be required to do so, but must do so voluntarily.<sup>126</sup>

If the local board of education decides to adopt such a policy, the personnel designated to carry or possess the weapon must be a license holder.<sup>127</sup> Further, if the board adopts such a policy, the Act also provides four specific requirements.<sup>128</sup> First, the policy must include training for the approved personnel.<sup>129</sup> The training must include at least judgment pistol shooting and marksmanship as well as a review of current laws relevant to the use of force for the defense of self and others, but prior military or law enforcement training may substitute some of these requirements.<sup>130</sup>

Second, the policy also must include a list of types of authorized weapons and ammunition—as well as the quantity of each—to be carried or possessed.<sup>131</sup> Third, the policy must include an exclusion pertaining to approval of any personnel who have a history of mental or emotional instability as determined by the board, as well as a

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122. O.C.G.A. § 16-11-130(a)(12); O.C.G.A. § 16-11-130(a)(12.1); O.C.G.A. § 16-11-130(a)(12.2) (Supp. 2014).

123. O.C.G.A. § 16-11-130.1 (Supp. 2014).

124. *Id.*

125. O.C.G.A. § 16-11-130.1(b) (Supp. 2014).

126. O.C.G.A. § 16-11-130.1(d) (Supp. 2014).

127. O.C.G.A. § 16-11-130.1(c) (Supp. 2014).

128. O.C.G.A. § 16-11-130.1(b) (Supp. 2014).

129. O.C.G.A. § 16-11-130.1(b)(1) (Supp. 2014).

130. *Id.*

131. O.C.G.A. § 16-11-130.1(b)(2) (Supp. 2014).

mandatory method for securing weapons.<sup>132</sup> Finally, the Act stipulates that a weapon must either be on the personnel's body or in a secured lock safe or similar lock box.<sup>133</sup>

The second new code section in 1-9, Code section 16-11-130.2, details individuals' rights to carry weapons in a commercial airport.<sup>134</sup> The Act prohibits a person from knowingly carrying a weapon into restricted access or security areas of commercial airports.<sup>135</sup> The Act also provides that any restricted access area shall be clearly indicated by prominent signs, and such restricted access or security areas do not include an airport drive, walkway, parking area, or areas around the terminals that are outside the screening checkpoints.<sup>136</sup>

Individuals who violate this Code section are guilty of a misdemeanor, regardless of whether they are or are not a license holder.<sup>137</sup> License holders do have the ability, however, to avoid the misdemeanor if they immediately leave the restricted access area after notice of the restricted access and completion of the federally required transportation security screening procedures.<sup>138</sup> Any person who violates this Code section with the intent to commit a separate felony will be guilty of a felony, with punishment for conviction ranging from \$1,000 to \$15,000 and imprisonment anywhere from one to ten years.<sup>139</sup>

Section 1-10 also adds two new code sections.<sup>140</sup> First, Code section 16-11-137 requires license holders to have their valid weapons carry licenses, or exemption from such requirement, in their immediate possession at all times while carrying a weapon.<sup>141</sup> This Act caps the maximum fine at ten dollars for a person who violates this provision, but produces a weapons carry license at court that was valid at the time of detention.<sup>142</sup> The Act also provides that no person

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132. O.C.G.A. § 16-11-130.1(b)(3) (Supp. 2014).

133. O.C.G.A. § 16-11-130.1(b)(4) (Supp. 2014).

134. O.C.G.A. § 16-11-130.2 (Supp. 2014).

135. O.C.G.A. § 16-11-130.2(a) (Supp. 2014).

136. *Id.*

137. O.C.G.A. § 16-11-130.2(b) (Supp. 2014).

138. *Id.*

139. O.C.G.A. § 16-11-130.2(c) (Supp. 2014).

140. O.C.G.A. § 16-11-137 (Supp. 2014).

141. O.C.G.A. § 16-11-137(a) (Supp. 2014).

142. O.C.G.A. § 16-11-137(c) (Supp. 2014).

carrying a weapon may be subject to detention solely for the purpose of identifying whether or not the person has a license.<sup>143</sup>

The second new code section, Code section 16-11-138, explains that the defense of self or of others as contemplated by Code section 16-3-24.2, relating to defenses to criminal prosecutions, is eligible as an absolute defense to any violation of provisions requiring physical possession of a weapons carry license.<sup>144</sup>

Section 1-11 amends Code section 16-11-173 to expand the breadth of legislative findings and preemption relating to local regulation and lawsuits.<sup>145</sup> The Act recognizes that the regulation of firearms and other weapons is a matter of statewide concern,<sup>146</sup> that lawful design, manufacture and sale of firearms, ammunition and other weapons is not unreasonably dangerous nor does it constitute a nuisance per se.<sup>147</sup> Further, the Act specifies that only the General Assembly can regulate gun shows, weapons dealers, or commercial activity involving firearms and accessories.<sup>148</sup>

The Act also provides that counties and municipalities may regulate the possession of firearms by their employees, provided that the sheriff or chief of police for that county or municipality shall be solely responsible for regulating the carrying and transportation of firearms by those employees under their supervision.<sup>149</sup> District attorneys and solicitors general are provided the same opportunity to regulate the transportation and carrying of firearms by employees under their supervision.<sup>150</sup> Additionally, the Act provides for a private cause of action for anyone aggrieved by a violation of this Code section.<sup>151</sup>

Section 1-12 adds Code section 16-12-129, expressing that defense of self or others as contemplated by Code section 16-3-24.2 is an absolute defense to any violation of the provisions of the

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143. O.C.G.A. § 16-11-137(b) (Supp. 2014).

144. O.C.G.A. § 16-11-138 (Supp. 2014).

145. O.C.G.A. § 16-11-173 (Supp. 2014).

146. O.C.G.A. § 16-11-173(a)(1) (Supp. 2014).

147. O.C.G.A. § 16-11-173(a)(2) (Supp. 2014).

148. O.C.G.A. § 16-11-173(b)(1) (Supp. 2014).

149. O.C.G.A. § 16-11-173(c)(1) (Supp. 2014).

150. O.C.G.A. § 16-11-173(c)(3) (Supp. 2014).

151. O.C.G.A. § 16-11-173(g) (Supp. 2014).

Transportation Passenger Safety Act, encompassed in Code sections 16-12-121 through 16-12-129.<sup>152</sup>

Section 1-13 amends Code section 35-3-4 to allow the Georgia Crime Information Center (GCIC) to maintain records as to persons who have been involuntarily hospitalized, and are permitted to provide such information to probate and superior courts in a manner agreed upon by the parties.<sup>153</sup> The Act stipulates that GCIC is also permitted to receive information about whether an individual has been adjudicated mentally incompetent to stand trial or has been found not guilty by reason of insanity at the time of the crime.<sup>154</sup> Further, the Act imposes a ten-day maximum for the clerk of the respective court to report the adjudication due to incompetence or insanity to the GCIC.<sup>155</sup>

Section 1-14 completely repeals Chapter 16 of Title 43, relating to the regulation of firearms dealers by the Georgia Department of Public Safety.<sup>156</sup> Among the regulations repealed is the requirement that firearms dealers obtain a license and maintain records of firearm sales and purchases.<sup>157</sup>

Section 2-2 adds Code section 38-3-37, to clarify Georgia weapons laws in states of emergency.<sup>158</sup> The Act prohibits state and local officials and National Guard members, during a state of emergency, from temporarily or permanently seizing any weapon or ammunition, the possession of which the law did not prohibit at the time immediately before the state of emergency was declared.<sup>159</sup> Additionally, the Act prohibits the same listed personnel from prohibiting possession or carrying of a weapon that was not otherwise prohibited immediately prior to the state of emergency.<sup>160</sup>

152. O.C.G.A. § 16-12-129 (Supp. 2014).

153. O.C.G.A. § 35-3-34 (Supp. 2014).

154. O.C.G.A. § 35-3-34(3)(B) (Supp. 2014).

155. O.C.G.A. § 35-3-34(e)(3)(B) (Supp. 2014); *see also* Jasperse Interview, *supra* note 15.

156. 2014 Ga. Laws 599 § 1-14, at 621.

157. O.C.G.A. § 43-16-2 *et seq.* (2011).

158. O.C.G.A. § 38-3-37 (Supp. 2014). *See also* O.C.G.A. § 38-3-3(7) (2012) (“State of emergency” is defined as “the condition declared by the Governor when, in his judgment, the threat or actual occurrence of a disaster, emergency, or energy emergency in any part of the state is of sufficient severity and magnitude to warrant extraordinary assistance by the state to supplement the efforts and available resources of the several localities and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby.”).

159. O.C.G.A. § 38-3-37(b) (Supp. 2014).

160. O.C.G.A. § 38-3-37(b)(2) (Supp. 2014).

The Act also stipulates that listed personnel may not require the registration of any firearm as a result of the declared state of emergency.<sup>161</sup>

Section 2-3 amends Code section 38-3-51, relating to the emergency powers of the Governor.<sup>162</sup> The previous version of this Code section allowed the Governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and combustibles in states of emergency.<sup>163</sup> The Act removes that ability for the Governor to suspend or limit transactions or transportation in regards to firearms.<sup>164</sup>

Sections 3-1 through 3-5 begin Part Three of the Act by correcting cross-references to definitions for “school safety zone” and “weapon” in Code sections 16-5-21, 16-5-24, 16-12-1, 20-2-1180, and 20-2-1185, respectively.<sup>165</sup>

Section 3-6 amends Code section 43-38-10 relating to private detectives and security agencies’ permits to carry firearms.<sup>166</sup> The previous version of this Code section required detectives to be at least twenty-one years old to be eligible for a weapons-carry permit.<sup>167</sup> The Act removes this requirement, instead replacing it with a provision allowing a permit to be issued to the detective if the detective is a licensed weapons holder and is registered as a detective with the Georgia Board of Private Detective and Security Agencies.<sup>168</sup>

### *Analysis*

#### *Constitutional Considerations*

Second Amendment implications arise with any gun rights issue, even those at the state level.<sup>169</sup> It does not appear that HB 60 will

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161. O.C.G.A. § 38-3-37(b)(4) (Supp. 2014).

162. O.C.G.A. § 38-3-51 (Supp. 2014).

163. O.C.G.A. § 38-3-51(d)(8) (2012).

164. O.C.G.A. § 38-3-51(d)(8) (Supp. 2014).

165. O.C.G.A. § 16-5-21 (Supp. 2014).

166. O.C.G.A. § 43-38-10 (Supp. 2014).

167. O.C.G.A. § 43-38-10(a) (2011).

168. O.C.G.A. § 43-38-10(a) (Supp. 2014).

169. GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244, 1259 (11th Cir. 2012).

face any constitutionality issues because the Act expands one's right to carry, rather than restricting it. The Act has even been seen as a restoration of Second Amendment rights that were, under prior laws, being infringed upon.<sup>170</sup>

Leader Abrams, however, disagrees that the prior laws were a restriction on one's Second Amendment rights and, instead believes that a different constitutional issue could arise from HB 60 via the Fourteenth Amendment.<sup>171</sup> The Fourteenth Amendment prohibits states from making or enforcing any laws that "deprive any person of life, liberty, or property without due process of law."<sup>172</sup> Applied here, the Fourteenth Amendment connects the actions taken by the Georgia legislature to the federal constitution, particularly the Fourth Amendment.

Neither Georgia nor federal law has extended the right for an individual to be "secure in their person" beyond the standard application regarding an individual's Fourth Amendment right to be free from illegal searches and seizures.<sup>173</sup> Representative Jasperse points out that the only constitutional rights in play should be: "one, [the right] to have [a] weapon, [and] two, to have . . . life and pursuit of happiness, and not be threatened by people who want to do us harm."<sup>174</sup> He then noted that "[j]ust as my right to have that weapon is a constitutional right, how we bear them is a Georgia law."<sup>175</sup>

### *Policy Considerations*

#### *Government Buildings*

For a government building to be gun-free, all points of entry must use some sort of screening procedure to ensure that individuals

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170. Niraj Chokshi, *What Georgia's Expansive New Pro-Gun Law Does*, WASH. POST (Apr. 23, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/04/23/what-georgias-expansive-new-pro-gun-law-does/>.

171. See Abrams Interview, *supra* note 17.

172. U.S. CONST. amend. XIV, § 1.

173. U.S. CONST. amend. IV. While there is no explicit right for a person to be "secure in their person," the Ninth Amendment notes that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. CONST. amend. IX.

174. See Jasperse Interview, *supra* note 15.

175. See *id.* (adding "how we carry them and where is a State's right, as it should be.").

entering the building do not have a weapon.<sup>176</sup> The Act's dissenters note that some smaller county and municipal governments may not have the funds necessary to keep their government buildings gun-free, as they were prior to the implementation of this Act.<sup>177</sup> Representative Jasperse explains, however, that those government buildings that only prohibited weapons through the posting of signs were not legitimate gun-free zones to begin with, because nobody was checking to make sure the building was actually gun-free.<sup>178</sup>

Representative Jasperse points out that the central question is essentially: "does having more guns in an environment create more issues?"<sup>179</sup> Due to the nature of the question, however, there is no definite answer. While having respectable individuals lawfully carrying weapons could certainly deter crime from taking place, one must also recognize that, as Leader Abrams stated: "you have to assume that that person [carrying the firearm] will now never be the cause of danger."<sup>180</sup>

### *Bars*

Prior to the implementation of the Act bar owners were allowed to admit persons lawfully carrying concealed weapons, so long as they had permission from the bar owner.<sup>181</sup> However, bar owners would

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176. *See id.*

177. *See* Abrams Interview, *supra* note 17 (explaining "we have more than 600 municipalities, 159 counties, and some of the smaller ones have as few as five employees. And so what you're saying is that in these buildings, even though we know they don't have security and we know they can't afford security—because sometimes these [metal detector] machines can cost upwards of \$30,000—and if you've got a county budget or a city budget that's only \$150,000 or \$200,000, that's a substantial sum of money and you would be forced to have one of those machines in order not to be compelled to allow weapons in.").

178. *See* Jasperse Interview, *supra* note 15 (stating "[I]f you . . . want it gun free inside, more power to you, but it's going to be gun free inside. I mean, we're not going to have this deal where 'we're just going to put a sign up' so only the good guys put their stuff up, the bad guys have got their guns in their pockets and they don't care what you say. So we're leveling the playing field for the good guy . . ."). *But see* Abrams Interview, *supra* note 17 (expressing "the reality is that the prohibition against weapons tends to preclude weapons from coming into those spaces because people tend to follow the law. If they didn't, we would have more anarchy than we have.").

179. *See* Jasperse Interview, *supra* note 15.

180. *See* Abrams Interview, *supra* note 17.

181. O.C.G.A. § 16-11-127(b)(6) (2011); *see also* Jasperse Interview, *supra* note 15.

often post signs stating that they did not welcome guns on the premises.<sup>182</sup>

According to Representative Jasperse, the Act does not remove a bar owner's ability to post signs excluding weapons.<sup>183</sup> However, the signs may not have any practical effect.<sup>184</sup> For supporters of this provision, the fear is when an average person sees a sign restricting weapons, that person could reasonably believe the owner of the property has taken some action to prevent people from bringing a weapon onto the property, when in reality there is no such protection.<sup>185</sup> Supporters urge private property owners to make sure their property is actually gun-free—through screening individuals upon entry—if they desire to put up signs suggesting it is a gun-free zone.<sup>186</sup>

### *Airports*

Another area of concern is the inclusion of language detailing lawful carrying of concealed weapons in unrestricted portions of airports.<sup>187</sup> Leader Abrams points out the concern, due at least in part to “recently [having] someone walk into an airport with a weapon and kill[ing] a TSA agent in Los Angeles.”<sup>188</sup> She continues by explaining “[i]n light of all of the tragedies associated with gun ownership, there is certainly no perfect protection, but government has a heightened responsibility to provide those protections it can . . . .”<sup>189</sup>

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182. O.C.G.A. § 16-11-127(b)(6) (2011); see also Jasperse Interview, *supra* note 15.

183. Jasperse Interview, *supra* note 15.

184. See Jasperse Interview, *supra* note 15 (noting the signs do not “have any effect, practically. Can they put it up? Well, yeah . . . but we don’t have a law in Georgia that, as it relates to weapons, allows a sign to be a deterrent. [They] can do it but it doesn’t mean anything. So they can put up six signs, but if you came on their property there is no deterrent, there is no penalty.”).

185. *Id.* (“This will make [an owner who wants to exclude weapons] have to do something.”).

186. See *id.* (stating “if you want to be a gun-free zone, make it a gun-free zone. Check every door and entrance just like you’re supposed to. And if you do, then it truly is [a gun free zone]. But if it’s not checked, what is it? It’s not a gun-free zone.”).

187. Kelly Yamanouchi, *Airport Prepares for New Gun Law*, ATLANTA J.-CONST. (June 29, 2014, 4:42 PM), <http://www.ajc.com/news/business/airport-prepares-for-new-gun-law/ngS6g/>.

188. See Abrams Interview, *supra* note 17; see also Pete Williams et al., *Gunman Opens Fire at LAX, Killing TSA Worker and Wounding Others*, NBC NEWS (Nov. 1, 2013), <http://www.nbcnews.com/news/other/gunman-opens-fire-lax-killing-tsa-worker-wounding-others-f8C11513442>.

189. See Abrams Interview, *supra* note 17.

On the other hand, gun policy prior to the implementation of the Act created gaps for licensed individuals who carried their weapons to the airport by mistake. As of the end of June 2014, with forty-six seized weapons, Hartsfield-Jackson International Airport was tied for most weapons seized at an airport in 2014.<sup>190</sup> Additionally, the airport's landscaping crew regularly finds weapons that have been discarded by individuals who realized that they accidentally carried their weapon into the airport.<sup>191</sup> According to Representative Jasperse: “[t]he people that pick up the trash look in the trash to see if weapons are there . . . they say they shake the trash bags to see if there are weapons in them. What this bill does now is it lets you put [the weapon] back [in your car, for instance].”<sup>192</sup> This measure was included, in part, to allow for citizens to properly remove or secure their weapons in the airport and to help keep weapons from being hidden in such a busy public forum,<sup>193</sup> but whether this measure reduces the amount of guns found and seized at Georgia airports remains to be seen.

### *Stand Your Ground*

Representative Jasperse notes that the Act's creators “were methodically looking at situations where Georgians were being blocked from defending themselves.”<sup>194</sup> One of the situations addressed dealt with providing an absolute immunity to individuals who use justifiable deadly force with a weapon in the defense of themselves or another in zones prohibiting the carry of weapons.<sup>195</sup> Opponents fear that the ability for an individual to claim such

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190. Rani Molla & Taylor Umlauf, *The TSA Has Confiscated More Than 1,000 Guns at U.S. Airports This Year*, WALL ST. J. (Aug. 8, 2014), <http://blogs.wsj.com/numbers/the-tsa-has-confiscated-more-than-1000-guns-at-u-s-airports-this-year-1670/>.

191. See Jasperse Interview, *supra* note 15. (explaining that the airport landscaping crew is “picking them up in the planters, and in the bushes, the flower planters, people put them in there. Those people are terrified, and they don't know what to do. They're in the airport and they find their little .38 special and they don't know what to do with that, so they stick it in a planter or drop it in the trashcan.”).

192. *Id.*

193. *Id.*

194. *Id.*

195. See O.C.G.A. § 16-3-24.2 (Supp. 2014).

immunity could remove the prohibition on using the immunity to justify possible instances of gang violence.<sup>196</sup>

Representative Jasperse makes it clear, however, that simply because an individual finds themselves in a situation that could provide for the absolute immunity from prosecution does not mean that they will receive it.<sup>197</sup> All the Act allows is the ability for that individual to get a hearing concerning a potential immunity.<sup>198</sup> He also reiterates that “[y]ou can’t use it if you are committing a crime.”<sup>199</sup> The language was incorporated into the Act in an effort to allow law-abiding citizens to defend themselves, with deadly force if necessary, in places that restrict lawfully carrying weapons.<sup>200</sup>

### *Looking Forward*

With the Act’s implementation on July 1, 2014, the practical effects are not fully understood. Many individuals will likely benefit from the increased safety provided by the Act,<sup>201</sup> but only time will tell whether the Act does, in-fact, make Georgia a safer place.<sup>202</sup> Leaders Abrams believes the new laws create a whole host of opportunities for lawsuits to be initiated.<sup>203</sup> Representative Jasperse

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196. See Abrams Interview, *supra* note 17 (explaining “[y]ou could force a gang member who is in a fight claiming that his opponent came at him and thus he had to use deadly force, and now we have given him a presumptive defense against being charged with murder . . .”).

197. See Jasperse Interview, *supra* note 15.

198. *Id.* (noting “all we’re saying is, now you get a hearing. If you’re a felon, you know, and you use a weapon in self-defense, you are immediately going to be charged with a felony because you’ve got a weapon. But what this additional part is, you can now get a hearing for the immunity.”)

199. *Id.*

200. *Id.* (explaining “if you’re in an area where weapons are prohibited . . . in [a college campus] parking lot [for example], you’re walking up to your car and three guys come beating the hooey out of you. I get out of my car, chase them off, they attack me and I shoot one of them . . . I can then [claim] self-defense, [] up until then I was not going to be able to because I was in a prohibitive space.”)

201. E.g., Mike Morris, *Report: Teen Shot Trying to Rob Clayton County Apartment Resident*, ATLANTA J.-CONST. (July 22, 2014, 6:43 AM), <http://www.ajc.com/news/news/report-teen-shot-trying-to-rob-clayton-county-apar/ngkWj/>.

202. See Abrams Interview, *supra* note 17 (explaining “if you look at the fact that, in the recent past we’ve had a number of gun tragedies, and the reaction in the State of Georgia was to pass looser gun laws, it would signal that as long as the composition of the General Assembly remains as it is, we will not react to tragedy by actually increasing safety.”)

203. See *Id.* (“I think that there [will be] causes of action created in schools and in public buildings because the first time that someone is injured they are going to sue the jurisdiction for not protecting them. There will [also] likely be some lawsuit from someone who is a victim of stand your ground . . .”).

also recognizes that “[t]here’s going to be a learning curve [regarding the new laws], and the courts will figure some of this out, too.”<sup>204</sup>

The types of lawsuits that may arise in the future, however, depend in large part on the extent to which the new laws are used. Portions of the law may even go unused entirely. For example, two district school boards have already agreed to refrain from creating a gun program.<sup>205</sup> Other school districts are balking at the opportunity to arm qualified employees because of concerns that it may raise the school’s insurance costs.<sup>206</sup> Representative Jasperse explains the law was not intended for the school systems that have money to hire other means of security; “[t]his was meant for the South Georgia counties, who [are] going bankrupt. They don’t know what to do about security. They can’t afford \$250,000, \$400,000 to have an armed guard at each one of their schools. You know, they’re just trying to keep the lights on.”<sup>207</sup> Representative Paul Battles (R-15th), responsible for most of the Act’s provisions regarding the carry of concealed weapons in school safety zones,<sup>208</sup> said that he is not disappointed schools are not using the provisions, but notes that officials should look into it if they cannot afford to provide security themselves.<sup>209</sup>

Outside of schools, other property owners and community leaders have ruled out carrying concealed weapons on their premises as well. Atlanta Mayor Kasim Reed (D) has declared all City of Atlanta property to be gun-free.<sup>210</sup> Target Corporation has taken efforts to

204. See Jasperse Interview, *supra* note 15.

205. Kathleen Foody, *Georgia Schools Aren’t Arming Their Teachers — Despite New Law*, HUFFINGTON POST (June 27, 2014), [http://www.huffingtonpost.com/2014/06/27/georgia-school-gun-law\\_n\\_5538272.html](http://www.huffingtonpost.com/2014/06/27/georgia-school-gun-law_n_5538272.html).

206. Tyler Jett, *Guns in Schools? Georgia Bill Becomes Battleground*, TIMES FREE PRESS (Apr. 5, 2014), <http://www.timesfreepress.com/news/2014/apr/05/guns-schools-bill-would-allow-it-its-unlikely-happ/?chattagov>.

207. Jasperse Interview, *supra* note 15 (explaining “we have school systems that are barely keeping the lights on.”).

208. *Id.* (noting “that part of the bill came from [Rep.] Paul Battles. . . . they spent a lot of time refining that part of the bill.”).

209. Foody, *supra* note 205.

210. Jim Galloway, *Kasim Reed Declares City of Atlanta Property to Be Gun-Free*, ATLANTA J.-CONST. (July 1, 2014), <http://politics.blog.ajc.com/2014/07/01/kasim-reed-declares-city-of-atlanta-property-to-be-gun-free/> (stating “in response to a new statewide gun law that took effect today, the City has taken extra security measures to keep employees and citizens safe at our facilities. Effective today, City recreation centers with extensive summer programming will be staffed with security officers to screen entrants and prevent firearms from entering the buildings. With the exception of certain public

notify its Georgia customers that guns are not welcome in their Georgia stores.<sup>211</sup> Catholic and Episcopal churches have opted out of allowing weapons to be carried in any of their respective Georgia congregations.<sup>212</sup>

Only after Georgia citizens become more knowledgeable and accustomed to the new law will the State be able to determine whether expanding one's right to carry positively or negatively affects Georgia's current rates of gun violence, as well as whether some of the more controversial aspects of the Act will even be used at all.

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safety officials and employees, there is no place for firearms in a city facility.”)

211. Kristina Torres, *Target: Don't Bring Guns in its Georgia Stores*, ATLANTA J.-CONST. (July 2, 2014), <http://www.ajc.com/news/news/state-regional-govt-politics/target-dont-bring-guns-in-its-georgia-stores/ngXtR/>.

212. Niraj Chokshi, *Georgia's Catholic, Episcopal Churches Opt out of Gun-Rights Expansion*, WASH. POST (May 2, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/05/02/georgias-catholic-episcopal-churches-opt-out-of-gun-rights-expansion/>.