

Senate Bill 365

By: Senators Karinshak of the 48th, Jackson of the 2nd, Jones of the 10th, Jordan of the 6th, Davenport of the 44th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 and Article 2 of Chapter 3 of Title 35 of the
2 Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices and
3 the Georgia Crime Information Center, respectively, so as to provide for the comprehensive
4 revision of certain provisions regarding Brady Law regulations; to provide for legislative
5 intent; to revise and to provide for definitions; to require that, instead of conducting the
6 National Instant Criminal Background Check System check, licensed dealers shall request
7 criminal history and involuntary hospitalization records checks from the Georgia Crime
8 Information Center within the Georgia Bureau of Investigation on each potential firearm
9 buyer or transferee; to require that the center provide such records checks to such dealers;
10 to provide for rules, regulations, fees, prohibitions, and annual report; to provide for penalties
11 and exceptions; to amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia
12 Annotated, relating to appellate practice, so as to correct a cross-reference; to provide for
13 related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **PART I**
16 **SECTION 1-1.**

17 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
18 dangerous instrumentalities and practices, is amended by revising Part 5, relating to Brady
19 Law Regulations, and by adding a new part to read as follows:

"Part 5

20

21 16-11-170.

22 (a) It is the intention of this part to establish state regulations which are consistent with the
 23 policy and terms of the federal Brady Handgun Violence Prevention Act by providing a
 24 state background check law.

25 (b) This part shall in all respects be construed and administered in conformity with the
 26 provisions of the federal Brady Handgun Violence Prevention Act. Without limiting the
 27 generality of the foregoing, it is specifically intended that this part shall constitute a state
 28 law requiring verification by a state official that information available does not indicate that
 29 possession of a firearm by a proposed transferee would be in violation of state or federal
 30 law Reserved.

31 16-11-171.

32 As used in this part, the term:

33 (1) 'Bureau' means the Georgia Bureau of Investigation.34 (2) 'Center' means the Georgia Crime Information Center within the Georgia Bureau of
35 Investigation bureau.36 ~~(2)~~(3) 'Dealer' means any person licensed as a dealer pursuant to 18 U.S.C. Section 921,
37 et seq.38 ~~(3)~~(4) 'Firearm' means any weapon that is designed to or may readily be converted to
39 expel a projectile by the action of an explosive or the frame or receiver of any such
40 weapon, any firearm muffler or firearm silencer, or any destructive device as defined in
41 18 U.S.C. Section 921(a)(3).42 ~~(4)~~(5) 'Involuntarily hospitalized' means hospitalized as an inpatient in any mental health
43 facility pursuant to Code Section 37-3-81 or hospitalized as an inpatient in any mental
44 health facility as a result of being adjudicated mentally incompetent to stand trial or being
45 adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of
46 Article 6 of Title 17.47 ~~(5)~~(6) 'NICS' means the National Instant Criminal Background Check System created
48 by the federal 'Brady Handgun Violence Prevention Act' (P. L. No. 103-159).49 (7) 'Proper identification' shall have the same meaning as provided under Code Section
50 16-12-170.

51 16-11-172.

52 No dealer shall sell or transfer from such dealer's business inventory any firearm to another
53 person, other than a person licensed pursuant to 18 U.S.C. Section 921, et seq., unless:

- 54 (1) The dealer has obtained a completed consent form from the potential buyer or
 55 transferee, which form shall have been promulgated by the bureau and provided by such
 56 dealer, which shall include only the name, birth date, gender, race, and social security
 57 number or other identification number of such potential buyer or transferee;
- 58 (2) The dealer has been furnished with and inspected proper identification containing of
 59 the potential buyer or transferee;
- 60 (3) The dealer has requested, by electronic or other means as established by the bureau,
 61 that the center conduct a criminal history and involuntary hospitalization records check
 62 on the potential buyer or transferee;
- 63 (4) The dealer has received a transaction identification number for such criminal history
 64 and involuntary hospitalization records check from the center verifying that the
 65 information available to the center indicates that possession of a firearm by the purchaser
 66 or transferee would not be in violation of federal or state law; and
- 67 (5) The dealer has recorded the date of receipt of the transaction identification number
 68 and such number on the consent form.
- 69 ~~(a) All transfers or purchases of firearms conducted by a licensed importer, licensed~~
 70 ~~manufacturer, or licensed dealer shall be subject to the NICS. To the extent possible, the~~
 71 ~~center shall provide to the NICS all necessary criminal history information and wanted~~
 72 ~~person records in order to complete an NICS check.~~
- 73 ~~(b) The center shall forward to the Federal Bureau of Investigation information concerning~~
 74 ~~persons who have been involuntarily hospitalized as defined in this part for the purpose of~~
 75 ~~completing an NICS check.~~
- 76 ~~(c) Any government official who willfully or intentionally compromises the identity,~~
 77 ~~confidentiality, and security of any records and data pursuant to this part shall be guilty of~~
 78 ~~a felony and fined no less than \$5,000.00 and shall be subject to automatic dismissal from~~
 79 ~~his or her employment.~~
- 80 ~~(d) The provisions of this part shall not apply to:~~
- 81 ~~(1) Any firearm, including any handgun with a matchlock, flintlock, percussion cap, or~~
 82 ~~similar type of ignition system, manufactured in or before 1898;~~
- 83 ~~(2) Any replica of any firearm described in paragraph (1) of this subsection if such~~
 84 ~~replica is not designed or redesigned to use rimfire or conventional center-fire fixed~~
 85 ~~ammunition or uses rimfire or conventional center-fire fixed ammunition which is no~~
 86 ~~longer manufactured in the United States and which is not readily available in the~~
 87 ~~ordinary channels of commercial trade; and~~
- 88 ~~(3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11.~~

89 16-11-173.

90 Upon receipt of a request from a dealer for a criminal history and involuntary
 91 hospitalization records check on the potential buyer or transferee, the center shall
 92 immediately, but no later than the end of the next business day:

93 (1) Review all criminal history and involuntary hospitalization records electronically
 94 available to the center, including, but not limited to, information within NICS, to
 95 determine if the potential buyer or transferee is prohibited from receipt or possession of
 96 a firearm pursuant to state or federal law; and

97 (2) Inform the dealer making the inquiry that its records demonstrate that the potential
 98 buyer or transferee is so prohibited or provide such dealer with a transaction
 99 identification number.

100 ~~(a)(1) It is declared by the General Assembly that the regulation of firearms and other~~
 101 ~~weapons is properly an issue of general, state-wide concern.~~

102 ~~(2) The General Assembly further declares that the lawful design, marketing,~~
 103 ~~manufacture, and sale of firearms and ammunition and other weapons to the public is not~~
 104 ~~unreasonably dangerous activity and does not constitute a nuisance per se.~~

105 ~~(b)(1) Except as provided in subsection (c) of this Code section, no county or municipal~~
 106 ~~corporation, by zoning, by ordinance or resolution, or by any other means, nor any~~
 107 ~~agency, board, department, commission, political subdivision, school district, or authority~~
 108 ~~of this state, other than the General Assembly, by rule or regulation or by any other~~
 109 ~~means shall regulate in any manner:~~

110 ~~(A) Gun shows;~~

111 ~~(B) The possession, ownership, transport, carrying, transfer, sale, purchase, licensing,~~
 112 ~~or registration of firearms or other weapons or components of firearms or other~~
 113 ~~weapons;~~

114 ~~(C) Firearms dealers or dealers of other weapons; or~~

115 ~~(D) Dealers in components of firearms or other weapons.~~

116 ~~(2) The authority to bring suit and right to recover against any weapons, firearms, or~~
 117 ~~ammunition manufacturer, trade association, or dealer by or on behalf of any~~
 118 ~~governmental unit created by or pursuant to an Act of the General Assembly or the~~
 119 ~~Constitution, or any department, agency, or authority thereof, for damages, abatement,~~
 120 ~~or injunctive relief resulting from or relating to the lawful design, manufacture,~~
 121 ~~marketing, or sale of weapons, firearms, or ammunition to the public shall be reserved~~
 122 ~~exclusively to the state. This paragraph shall not prohibit a political subdivision or local~~
 123 ~~government authority from bringing an action against a weapons, firearms, or~~
 124 ~~ammunition manufacturer or dealer for breach of contract or express warranty as to~~

125 ~~weapons, firearms, or ammunition purchased by the political subdivision or local~~
126 ~~government authority.~~

127 ~~(c)(1) A county or municipal corporation may regulate the transport, carrying, or~~
128 ~~possession of firearms by employees of the local unit of government, or by unpaid~~
129 ~~volunteers of such local unit of government, in the course of their employment or~~
130 ~~volunteer functions with such local unit of government; provided, however, that the~~
131 ~~sheriff or chief of police shall be solely responsible for regulating and determining the~~
132 ~~possession, carrying, and transportation of firearms and other weapons by employees~~
133 ~~under his or her respective supervision so long as such regulations comport with state and~~
134 ~~federal law.~~

135 ~~(2) The commanding officer of any law enforcement agency shall regulate and determine~~
136 ~~the possession, carrying, and transportation of firearms and other weapons by employees~~
137 ~~under his or her supervision so long as such regulations comport with state and federal~~
138 ~~law.~~

139 ~~(3) The district attorney, and the solicitor-general in counties where there is a state court,~~
140 ~~shall regulate and determine the possession, carrying, and transportation of firearms and~~
141 ~~other weapons by county employees under his or her supervision so long as such~~
142 ~~regulations comport with state and federal law.~~

143 ~~(d) Nothing contained in this Code section shall prohibit municipalities or counties, by~~
144 ~~ordinance or resolution, from requiring the ownership of guns by heads of households~~
145 ~~within the political subdivision.~~

146 ~~(e) Nothing contained in this Code section shall prohibit municipalities or counties, by~~
147 ~~ordinance or resolution, from reasonably limiting or prohibiting the discharge of firearms~~
148 ~~within the boundaries of the municipal corporation or county.~~

149 ~~(f) As used in this Code section, the term 'weapon' means any device designed or intended~~
150 ~~to be used, or capable of being used, for offense or defense, including but not limited to~~
151 ~~firearms, bladed devices, clubs, electric stun devices, and defense sprays.~~

152 ~~(g) Any person aggrieved as a result of a violation of this Code section may bring an~~
153 ~~action against the person who caused such aggrievement. The aggrieved person shall be~~
154 ~~entitled to reasonable attorney's fees and expenses of litigation and may recover or obtain~~
155 ~~against the person who caused such damages any of the following:~~

156 ~~(1) Actual damages or \$100.00, whichever is greater;~~

157 ~~(2) Equitable relief, including, but not limited to, an injunction or restitution of money~~
158 ~~and property; and~~

159 ~~(3) Any other relief which the court deems proper.~~

160 16-11-174.

161 (a) The director of the bureau shall be authorized to promulgate rules and regulations to
162 carry out the purposes of this part.

163 (b) The bureau may charge and collect a fee for each criminal history and involuntary
164 hospitalization records check conducted pursuant to this part.

165 16-11-175.

166 The bureau shall not create any list containing any of the information collected pursuant
167 to this part unless the potential buyer or transferee is prohibited from receipt or possession
168 of a firearm pursuant to state or federal law.

169 16-11-176.

170 By January 15 of each year, the bureau shall provide to the Speaker of the House of
171 Representatives and the President of the Senate an annual report which shall include, but
172 shall not be limited to, the number of requests made by dealers pursuant to this part for the
173 prior calendar year, the number of requests resulting in a determination that the potential
174 buyer or transferee was prohibited from receipt or possession of a handgun pursuant to
175 state or federal law, and the estimated costs of administering this part.

176 16-11-177.

177 Any government official who willfully or intentionally compromises the identity,
178 confidentiality, and security of any records and data pursuant to this part shall be guilty of
179 a felony and fined no less than \$5,000.00 and shall be subject to automatic dismissal from
180 his or her employment.

181 16-11-178.

182 The provisions of this part shall not apply to:

183 (1) Any firearm, including any handgun with a matchlock, flintlock, percussion cap, or
184 similar type of ignition system, manufactured in or before 1898;

185 (2) Any replica of any firearm described in paragraph (1) of this Code section if such
186 replica is not designed or redesigned to use rimfire or conventional center-fire fixed
187 ammunition or uses rimfire or conventional center-fire fixed ammunition which is no
188 longer manufactured in the United States and which is not readily available in the
189 ordinary channels of commercial trade; or

190 (3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11.

191

Part 6192 16-11-180.

193 (a)(1) It is declared by the General Assembly that the regulation of firearms and other
194 weapons is properly an issue of general, state-wide concern.

195 (2) The General Assembly further declares that the lawful design, marketing,
196 manufacture, and sale of firearms and ammunition and other weapons to the public is not
197 unreasonably dangerous activity and does not constitute a nuisance per se.

198 (b)(1) Except as provided in subsection (c) of this Code section, no county or municipal
199 corporation, by zoning, by ordinance or resolution, or by any other means, nor any
200 agency, board, department, commission, political subdivision, school district, or authority
201 of this state, other than the General Assembly, by rule or regulation or by any other
202 means shall regulate in any manner:

203 (A) Gun shows;

204 (B) The possession, ownership, transport, carrying, transfer, sale, purchase, licensing,
205 or registration of firearms or other weapons or components of firearms or other
206 weapons;

207 (C) Firearms dealers or dealers of other weapons; or

208 (D) Dealers in components of firearms or other weapons.

209 (2) The authority to bring suit and right to recover against any weapons, firearms, or
210 ammunition manufacturer, trade association, or dealer by or on behalf of any
211 governmental unit created by or pursuant to an Act of the General Assembly or the
212 Constitution, or any department, agency, or authority thereof, for damages, abatement,
213 or injunctive relief resulting from or relating to the lawful design, manufacture,
214 marketing, or sale of weapons, firearms, or ammunition to the public shall be reserved
215 exclusively to the state. This paragraph shall not prohibit a political subdivision or local
216 government authority from bringing an action against a weapons, firearms, or
217 ammunition manufacturer or dealer for breach of contract or express warranty as to
218 weapons, firearms, or ammunition purchased by the political subdivision or local
219 government authority.

220 (c)(1) A county or municipal corporation may regulate the transport, carrying, or
221 possession of firearms by employees of the local unit of government, or by unpaid
222 volunteers of such local unit of government, in the course of their employment or
223 volunteer functions with such local unit of government; provided, however, that the
224 sheriff or chief of police shall be solely responsible for regulating and determining the
225 possession, carrying, and transportation of firearms and other weapons by employees

226 under his or her respective supervision so long as such regulations comport with state and
 227 federal law.

228 (2) The commanding officer of any law enforcement agency shall regulate and determine
 229 the possession, carrying, and transportation of firearms and other weapons by employees
 230 under his or her supervision so long as such regulations comport with state and federal
 231 law.

232 (3) The district attorney, and the solicitor-general in counties where there is a state court,
 233 shall regulate and determine the possession, carrying, and transportation of firearms and
 234 other weapons by county employees under his or her supervision so long as such
 235 regulations comport with state and federal law.

236 (d) Nothing contained in this Code section shall prohibit municipalities or counties, by
 237 ordinance or resolution, from requiring the ownership of guns by heads of households
 238 within the political subdivision.

239 (e) Nothing contained in this Code section shall prohibit municipalities or counties, by
 240 ordinance or resolution, from reasonably limiting or prohibiting the discharge of firearms
 241 within the boundaries of the municipal corporation or county.

242 (f) As used in this Code section, the term 'weapon' means any device designed or intended
 243 to be used, or capable of being used, for offense or defense, including, but not limited to,
 244 firearms, bladed devices, clubs, electric stun devices, and defense sprays.

245 (g) Any person aggrieved as a result of a violation of this Code section may bring an
 246 action against the person who caused such aggrievement. The aggrieved person shall be
 247 entitled to reasonable attorney's fees and expenses of litigation and may recover or obtain
 248 against the person who caused such damages any of the following:

249 (1) Actual damages or \$100.00, whichever is greater;

250 (2) Equitable relief, including, but not limited to, an injunction or restitution of money
 251 and property; and

252 (3) Any other relief which the court deems proper."

253 **SECTION 1-2.**

254 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
 255 Georgia Crime Information Center, is amended by revising subsection (d.1) of Code
 256 Section 35-3-34, relating to disclosure and dissemination of criminal records to private
 257 persons and businesses, resulting responsibility and liability of issuing center, and provision
 258 of certain information to the FBI in conjunction with the National Instant Criminal
 259 Background Check System, as follows:

260 "(d.1) The center shall be authorized and directed to review its criminal history records and
 261 involuntary hospitalization records information and to report to each dealer as provided in

262 Part 5 of Article 4 of Chapter 11 of Title 16 as to whether a named potential buyer or
263 transferee of a firearm is prohibited from purchasing or possessing a firearm by state or
264 federal law pursuant to the requirements of Part 5 of Article 4 of Chapter 11 of Title 16
265 **Reserved.**

266 **PART II**
267 **SECTION 2-1.**

268 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
269 appellate practice, is amended by revising paragraph (6) of subsection (a) of Code Section
270 5-6-34, relating to judgments and rulings deemed directly appealable, procedure for review
271 of judgments, orders, or decisions not subject to direct appeal, scope of review, hearings in
272 criminal cases involving a capital offense for which death penalty is sought, and appeals
273 involving nonmonetary judgments in child custody cases, as follows:

274 "(6) Any ruling on a motion which would be dispositive if granted with respect to a
275 defense that the action is barred by Code Section ~~16-11-173~~ 16-11-180;"

276 **PART III**
277 **SECTION 3-1.**

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