

House Bill 640

By: Representatives Smith of the 18th, Powell of the 32nd, Ballinger of the 23rd, Jasperse of the 11th, Collins of the 68th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to revise various laws pertaining to firearms and the carrying and possession
3 of firearms and other weapons; to revise the offense of simple assault; to revise unauthorized
4 locations for the carrying of weapons; to revise weapons carry license application
5 requirements; to provide for causes of action; to revise data base prohibition; to provide for
6 and revise a definition; to provide for a preemption for the discharge of firearms under
7 certain circumstances; to amend Article 3 of Chapter 5 of Title 17 of the Official Code of
8 Georgia Annotated, relating to disposition of property seized, to revise requirements for the
9 disposition of firearms in custody of law enforcement agencies; to provide for causes of
10 action; to amend Article 4 of Chapter 2 of Title 38 of the Official Code of Georgia
11 Annotated, relating to active duty powers, to revoke active duty powers relating to close
12 places where firearms and ammunition are sold; to revise Article 2 of Chapter 21 of Title 50
13 of the Official Code of Georgia Annotated, relating to state tort claims, so as to waive
14 sovereign immunity for certain claims; to amend Chapter 1 of Title 51 of the Official Code
15 of Georgia Annotated, relating to general provisions regarding torts, to provide immunity to
16 private property owners under certain circumstances; to provide for related matters; to repeal
17 conflicting laws; and for other purposes.

H. B. 640

- 1 -

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 **SECTION 1.**

20 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 21 amended by revising subsection (a) of Code Section 16-5-20, relating to simple assault, as
 22 follows:

23 "(a) A person commits the offense of simple assault when he or she ~~either:~~
 24 ~~(1) Attempts attempts to commit a violent injury to the person of another; or~~
 25 ~~(2) Commits an act which places another in reasonable apprehension of immediately~~
 26 ~~receiving a violent injury."~~

27 **SECTION 2.**

28 Said title is further amended by revising paragraph (4) of subsection (b) of Code Section
 29 16-11-127, relating to carrying weapons in unauthorized locations, as follows:

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

32 **SECTION 3.**

33 Said title is further amended by revising subparagraphs (a)(3)(A) and (b)(2)(I) and
 34 subsections (j) and (k) of Code Section 16-11-129, relating to weapons carry license, gun
 35 safety information, temporary renewal permit, mandamus, and verification of license, as
 36 follows:

37 "(3)(A) Applicants shall submit the application for a weapons carry license or renewal
 38 license to the judge of the probate court on forms prescribed and furnished free of
 39 charge to persons wishing to apply for the license or renewal license. The judge of the
 40 probate court shall accept applications for weapons carry licenses or renewal licenses
 41 on a first come, first serve basis, during normal business hours, and up to no earlier than

42 30 minutes before the end of normal business hours. A person aggrieved by a violation
43 of this paragraph may bring an action as provided for under subsection (j) of this Code
44 section."

45 "(I) Any person who has been convicted of any misdemeanor involving the use or
46 possession of a controlled substance and has not been free of all restraint or supervision
47 in connection therewith or free of:

48 ~~(i) A second conviction of any misdemeanor involving the use or possession of a~~
49 ~~controlled substance; or~~

50 ~~(ii) Any any conviction under subparagraphs (E) through (G) of this paragraph~~
51 ~~for at least five years immediately preceding the date of the application;"~~

52 "(j) **Applicant may seek relief.**

53 (1) When an eligible applicant fails to receive a license, temporary renewal license, or
54 renewal license within the time period required by this Code section and the application
55 or request has been properly filed, the applicant may bring an action in mandamus or
56 other legal proceeding in order to obtain a license, temporary renewal license, or renewal
57 license. When an applicant is otherwise denied a license, temporary renewal license, or
58 renewal license or is otherwise denied the ability to submit an application in conformance
59 with subparagraph (a)(1)(A) of this Code section and contends that he or she is qualified
60 to be issued a license, temporary renewal license, or renewal license, the applicant may
61 bring an action in mandamus or other legal proceeding in order to obtain such license.
62 Additionally, the applicant may request a hearing before the judge of the probate court
63 relative to the applicant's fitness to be issued such license. Upon the issuance of a denial,
64 the judge of the probate court shall inform the applicant of his or her rights pursuant to
65 this subsection. If such applicant is the prevailing party, he or she shall be entitled to
66 recover his or her costs in such action, including reasonable attorney's fees.

67 (2) In addition to any other relief, an eligible applicant or applicant who proves his or her
68 eligibility under this Code section but fails to receive or is denied a license, temporary

69 renewal license, or renewal license shall be entitled to actual damages or \$100.00,
70 whichever is greater.

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

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

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

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

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

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

82 **SECTION 4.**

83 Said title is further amended by revising subsection (e) of Code Section 16-11-173, relating
84 to legislative findings, preemption of local regulation and lawsuits, and exceptions, as
85 follows:

86 "(e)(1) Except as provided for in paragraph (2) of this subsection, nothing ~~Nothing~~
87 contained in this Code section shall prohibit municipalities or counties, by ordinance or
88 resolution, from reasonably limiting or prohibiting the discharge of firearms within the
89 boundaries of the municipal corporation or county.

90 (2) The General Assembly declares it to be unreasonable for a municipality or county to
91 prohibit the discharge of firearms on a parcel of land that is five acres or more in size
92 with the consent of the owner or lawful occupant of such land. Any such prohibition, by
93 zoning, ordinance, resolution, or any other manner is preempted."

SECTION 5.

94

95 Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
96 disposition of property seized, is amended by revising subsection (g) of Code Section
97 17-5-54, relating to definitions and disposition of personal property in custody of law
98 enforcement agency, as follows:

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

105 (2) Otherwise, an unclaimed firearm:

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

121 greater. A prevailing plaintiff in such an action shall be entitled to his or her costs,
122 including reasonable attorney's fees; or
123 (B) Possessed by the state or a political subdivision other than a municipal corporation,
124 shall be disposed of by sale at public auction. While any person may bid at auction, the
125 transfer of such firearms shall only be to persons, specified by the winning bidders, who
126 are licensed as firearms collectors, dealers, importers, or manufacturers under the
127 provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such
128 firearms under the terms of such license. Auctions required by this subparagraph may
129 occur online on a rolling basis or at live events, but in no event shall such auctions
130 occur less frequently than once every 12 months during any time in which the political
131 subdivision or state custodial agency has an inventory of five or more ~~saleable~~ firearms.
132 If the state or a political subdivision other than a municipal corporation does not
133 dispose of such firearms as required by this Code section, a person interested in
134 acquiring any such firearms may bring an action in mandamus or other legal proceeding
135 to compel the disposition. A person who has been unable to acquire a firearm because
136 of the state or such political subdivision's failure to dispose of the firearm pursuant to
137 this Code section shall, in addition to any other relief to which he or she is entitled, be
138 entitled to actual damages or \$100.00, whichever is greater. A prevailing plaintiff in
139 such an action shall be entitled to his or her costs, including reasonable attorney's fees.
140 (3) If no bids from eligible recipients are received within six months from when bidding
141 opened on a firearm offered for sale pursuant to paragraph (2) of this subsection, the
142 firearm shall be transferred to the Division of Forensic Sciences of the Georgia Bureau
143 of Investigation, a municipal or county law enforcement forensic laboratory for training
144 or experimental purposes, or be destroyed."

145 **SECTION 6.**

146 Article 4 of Chapter 2 of Title 38 of the Official Code of Georgia Annotated, relating to
147 active duty powers, is amended by repealing Code Section 38-2-301, relating to closing
148 places where firearms and ammunition sold, where disorder likely to occur, and penalty for
149 not obeying closing order, in its entirety and designating such Code section as reserved.

150 **SECTION 7.**

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

153 "50-21-38.

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

161 **SECTION 8.**

162 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
163 provisions regarding torts, is amended by adding a new Code section to read as follows:

164 "51-1-56.

165 A private property owner who does not restrict the lawful possession of weapons on his or
166 her property shall be immune from civil liability for any claims arising out of a theory that
167 such property owner should have or could have restricted the lawful possession of weapons
168 on his or her property. This Code section shall apply to causes of action accruing on or
169 after July 1, 2021."

170

SECTION 9.

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