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SALE, USE, AND POSSESSION OF FIREARMS

Offenses Against Public Order and Safety: Amend Article 4 of Chapter 11 of Title 16, and Article 3 of Chapter 3 of Title 37, of the Official Code of Georgia Annotated, Relating to Dangerous Instrumentalities and Practices, Disclosure and Dissemination of Criminal Background Checks to Private Persons and Businesses, and Examination, Hospitalization, and Treatment of Involuntary Patients, Respectively, so as to Change Provisions Relating to Carrying Weapons and the Issuance of Weapons Carry Licenses; Provide for a Short Title; 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; Allow Persons Who Have Had Their Weapons Carry License 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; Remove Fingerprinting Requirements for Renewal Licenses; Change Provisions Relating to Persons Exempt from the Provisions of Section 162 of Part 3 of Article 4 of Chapter 11 of Title 16 through Section 127.2 of Part 3 of Article 4 of Chapter 11 of Title 16; 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; Change Legislative Findings and Provide for Preemption for Weapons Other than Firearms; Provide for the Collection and Dissemination of Information Pertinent to Issuing Weapons Carry Licenses; Amend Code Section 1 of Article 1 of Chapter 12 of Title 16 and Code Section 10 of Chapter 38 of Title 43 of the Official Code of Georgia Annotated, Relating to Contributing to the Delinquency, Unruliness, or Deprivation of a Minor 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); 16-11-126, -127, -127.1, -129, -130 (amended); -130.1 (new); -130.2 (new); -173 (amended); 16-12-1 (amended); 35-3-34 (amended); 37-3-98 (new); 43-38-10 (amended)
BILL NUMBER:	SB 101
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have permitted licensed individuals to carry guns in locations where they were previously unauthorized including places of worship, college campuses, airports, and bars. In addition, the bill would have permitted certain teachers and administrators to carry guns in school safety zones, on school buses, and at school functions. The bill also would have created reciprocity between Georgia and other states regarding gun carry permits.
EFFECTIVE DATE:	N/A

History

Senate Bill (SB) 101 was originally introduced by Senator Frank Ginn (R-47th) for the primary purpose of improving the reciprocity between Georgia and other states regarding gun carrying permits.[1] However, the bill was ultimately combined with other legislation and would have allowed individuals to carry guns in various locations

1. *See* Telephone Interview with Sen. Frank Ginn (R-47th) (May 16, 2013) [hereinafter Ginn Interview] (noting that SB 101 was initially focused on improving reciprocity with South Carolina, although the ultimate goal was to achieve national reciprocity regarding gun carrying licenses).

where they were previously unauthorized.[2] Under current Georgia law, it is illegal for anyone to carry a weapon in a church, airport, bar, or government building.[3]

Georgia has a long history of prohibiting individuals from carrying weapons in certain public places.[4] In 1870, the legislature enacted the Public Gathering Law[5] which made it illegal to carry a deadly weapon within a court, election precinct, place of worship, or at any "public gathering" within Georgia.[6] Over the years, Georgia courts have struggled to clarify the meaning of "public gathering." In 1983, the Georgia Court of Appeals ruled that an automobile auction site was a "public gathering" because of the large amount of people who were present.[7] Less than a decade later, the same court ruled that a McDonald's was not a "public gathering," holding the focus should be on the "gathering" of people as opposed to the particular place.[8]

Although there appears to be some ambiguity regarding what falls within the definition of "public gathering," schools are clearly identified as a place where guns are prohibited in Georgia.[9] Considering the tragic events that recently took place at Sandy Hook Elementary School in Connecticut, it is not surprising that tensions ran high when the Georgia legislature considered a bill that would have allowed certain individuals to carry guns on school campuses.

Recently, the Supreme Court of the United States made a number of rulings concerning gun laws,[10] and President Obama has even urged Congress to pass legislation to help reduce gun violence.[11] It was in this environment that the Georgia General Assembly considered SB 101.

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2. *Id.*

3. O.C.G.A. § 16-11-127(b)(1)(4)(6) (2011) (stating "a person shall be guilty . . . for a misdemeanor when he or she carries a weapon . . . while [i]n a government building . . . [i]n a place of worship . . . [or] [i]n a bar.").

4. Danielle Hudson & Sara Adams, *Crimes and Offenses*, 27 GA. ST. U. L. REV. 131, 132 (2010).

5. 1870 Ga. Laws 421 (codified at O.C.G.A. § 16-11-127 (Supp. 2009)).

6. *Id*.

7. Jordan v. State, 166 Ga. App. 417, 304 S.E.2d 522 (1983).

8. State v. Burns, 200 Ga. App. 16, 406 S.E.2d 547 (1991).

9. O.C.G.A. § 16-11-127.1 (2011).

10. *See, e.g.*, McDonald v. City of Chicago, 130 S. Ct. 3020 (2010); District of Columbia v. Heller, 554 U.S. 570 (2008).

11. *Now is the Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence*, THE WHITE HOUSE (Jan. 16, 2013), http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf.

Bill Tracking of SB 101

Consideration and Passage by the Senate

Senators Frank Ginn (R-47th), Jesse Stone (R-23rd), Ross Tolleson (R-20th), Jeff Mullis (R-53rd), and Judson Hill (R-32nd) sponsored SB 101.[12] The Senate read the bill for the first time on February 4, 2013.[13] Lieutenant Governor Casey Cagle (R) assigned SB 101 to the Senate Judiciary Non-Civil Committee, which favorably reported a Committee substitute on February 28, 2013.[14] The Committee made substantial changes to the bill, combining SB 101 with other legislation intended to amend the state's gun laws.[15] Among other things, the Committee substitute would have prevented the state from maintaining a database of information regarding weapons permit holders.[16] The change was motivated by a recent incident in New York, where a news outlet published an interactive Google map which showed the names and addresses of all pistol permit holders in certain counties in that state.[17]

Additionally, the Committee added language that changed the requirements for receiving a weapons carry license for residents who served in the military and received a discharge other than dishonorable.[18] The thought behind the amendment is that members of the military likely have a better understanding of life and death consequences than average citizens and should thus be allowed to carry weapons at a younger age.[19] The Senate read the Committee substitute on March 1, 2013.[20] The Senate read the bill for a third time on March 4, 2013, and during the floor debate, Senators Loudermilk (R-14th) and Ginn (R-47th) offered an amendment

12. SB 101, as introduced, 2013 Ga. Gen. Assem.
13. State of Georgia Final Composite Status Sheet, SB 101, May 9, 2013.
14. *Id.*
15. *See* Ginn Interview, *supra* note 1.
16. *Compare* SB 101, as introduced, § 4, p. 4, ln. 97, 2013 Ga. Gen. Assem., *with* SB 101 (SCS), § 4, p. 4, ln. 104–113, 2013 Ga. Gen. Assem.
17. Dwight R. Worley, *The Gun Owner Next Door: What You Don't Know About The Weapons in Your Neighborhood*, THE JOURNAL NEWS, Dec. 23, 2012, http://www.lohud.com/apps/pbcs.dll/article?AID=2012312230056&nclick_check=1.
18. *Compare* SB 101, as introduced, § 4, p. 4, ln. 97, 2013 Ga. Gen. Assem., *with* SB 101 (SCS), § 4, p. 4, ln. 114–122, 2013 Ga. Gen. Assem.
19. Ginn Interview, *supra* note 1.
20. State of Georgia Final Composite Status Sheet, SB 101, May 9, 2013.

making a minor technical change to the bill, which was adopted without objection.[21] The Senate adopted the Committee substitute with the floor amendment by a vote of 41 to 10.[22]

Consideration and Passage by the House

Representative Rick Jasperse (R-11th) sponsored SB 101 in the House, and the bill was first read on March 5, 2013.[23] The bill was again read on March 7, 2013, and Speaker of the House David Ralston (R-7th) assigned the bill to the House Committee on Public Safety and Homeland Security.[24] The Committee favorably reported a substitute to the Senate bill on March 20, 2013.[25] The House read the bill for a third time on March 22, 2013 and passed it by a vote of 116 to 55.[26] The House substitute substantially altered the content of the Senate version, adding a total of fourteen pages to the bill. The primary change involved the addition of language permitting the carry of firearms in religious buildings and allowing weapons on school campuses under certain circumstances.[27] These changes would have allowed religious institutions to individually decide whether firearms should be allowed on the premises.[28] Moreover, the House substitute would have authorized certain persons to carry weapons within school safety zones, at school functions, and on school property.[29]

Additionally, the House substitute would have amended the record-keeping involved when persons seeking to purchase a firearm have received involuntary treatment for a mental condition.[30] The House also removed the language regarding reciprocity on weapons

21. *Id.*
22. Georgia Senate Voting Record, SB 101 (Mar. 4, 2013).
23. State of Georgia Final Composite Status Sheet, SB 101, May 9, 2013.
24. *Id.*
25. *Id.*
26. State of Georgia Final Composite Status Sheet, SB 101, May 9, 2013; Georgia House of Representatives Voting Record, HB 172 (Mar. 22, 2013).
27. *See* SB 101 (HCS), §§ 1-3, -4, -7, p. 2–8, 14–16, ln. 43–277, 474–549, 2013 Ga. Gen. Assem.
28. SB 101 (HCS), § 1-3, p. 3, ln. 76–77, 2013 Ga. Gen. Assem.
29. SB 101 (HCS), § 1-4, p. 4–8, ln. 125–277, 2013 Ga. Gen. Assem.
30. *See* SB 101 (HCS), § 1-9, -10, p. 17–18, ln. 580–613, 2013 Ga. Gen. Assem.

permits with other states, a primary goal of the bill when it was introduced.[31]

After passing the amended version of SB 101, the House immediately transmitted the bill to the Senate for approval, which the Senate did not give.[32] The House insisted on its position and the two chambers appointed members to proceed to Conference Committee.[33] On March 25, 2013, Senators Barry Loudermilk (R-14th), Cecil Staton (R-18th), and Frank Ginn (R-47th) were chosen to represent the Senate, and Representatives John Meadows (R-5th), Rick Jasperse (R-11th), and Alan Powell (R-32nd) were chosen to represent the House.[34] The Conference Committee was unable to reach an agreement and the bill stalled for the year.[35]

The Bill

The bill would have amended Title 16 of the Official Code of Georgia Annotated by expanding the areas where persons may legally carry weapons, changing eligibility requirements for a weapons license, and by changing mens rea requirements for contributing to the delinquency of a minor.[36]

Section 1-1 titles the bill as the "Safe Carry Protection Act."[37] Section 1-2 would have amended Code Section 16-11-126 to clarify how a person who is eligible for a carry permit may transport a firearm.[38] Moreover, the legislature intended this section of the bill to clarify Code section 16-11-126 by specifying that a person with legal control of private property has the right to exclude or eject a person in possession of a firearm from that property.[39]

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31. *Compare* SB 101 (HCS), § 1-9, -10, pp. 17–18, ln. 580–613. § 1-3, pp. 3–4, ln. 90–100, 2013 Ga. Gen. Assem., *with* SB 101 (SCSFA), § 2, p. 3–4, ln. 89–97, 2013 Ga. Gen. Assem.; *see* Ginn Interview, *supra* note 1.
32. State of Georgia Final Composite Status Sheet, SB 101, May 9, 2013.
33. *Id.*
34. GEORGIA GENERAL ASSEMBLY, http://www.legis.ga.gov/legislation/en-US/display/20132014/SB/101 (last visited Aug. 29, 2013).
35. State of Georgia Final Composite Status Sheet, SB 101, May 9, 2013.
36. *See* SB 101 (HCS), 2013 Ga. Gen. Assem.
37. SB 101 (HCS), § 1-1, p. 2, ln. 28, 2013 Ga. Gen. Assem.
38. *Id.* § 1-2, p.2, ln. 30–41.
39. *Id.*

Section 1-3 sought to amend Code section 16-11-127 by changing areas where a person may lawfully carry a weapon.[40] First, this portion of the bill would have amended Code sections 16-11-127.1 and 16-11-127 to create exceptions to the rule providing for the guilt of a person carrying a weapon in an unauthorized location.[41] In addition, this section of the bill would have given administrators of places of worship the discretion to choose whether or not to allow license holders to carry weapons into their respective place of worship.[42] The legislature also intended this section to clarify when a person may or may not carry a weapon onto government property.[43] The bill would have allowed license holders to carry weapons into government buildings when access to those buildings was not restricted by security checkpoints during business hours.[44] Further, SB 101 would have drawn a distinction between license holders and non-license holders by providing that a license holder may exit a government building with no penalty if he or she discovers it has a security checkpoint; however, a non-license holder is guilty of a misdemeanor if he or she enters that same building without a permit.[45]

Section 1-4 would have amended language governing the illegality of carrying weapons in school zones or on school property.[46] First, the bill sought to provide clarification for the section by defining "bus or other transportation," "school function," and "school safety zones."[47] Further, section 1-4 would have exempted a person from punishment if he or she carried a firearm on a school campus so long as that person: 1) had written permission from an authorized official of the school; or 2) was a weapons license holder and was in a school safety zone to carry or pick up a student or was merely in transit through the school zone.[48] This section also would have allowed some *students* to carry weapons in their vehicles as long as they were

40. *Id.* § 1-3, p. 2–4, ln. 41–123.
41. *Id.* § 1-3, p. 3, ln. 69–70.
42. *Id.* § 1-3, p. 3, ln. 76–77.
43. SB 101 (HCS), § 1-3, p. 4, ln. 114–23, 2013 Ga. Gen. Assem.
44. *Id.* § 1-3, p. 4, ln. 114–16.
45. *Id.* § 1-3, p. 4, ln. 116–23.
46. *Id.* § 1-4, p. 4–8, ln. 125–277.
47. *Id.* § 1-4, p. 4–5, ln. 129–39.
48. *Id.* § 1-4, p. 6, ln. 179–95.

over twenty-one and had written permission from an authorized school official.[49] This exception would not have applied to students attending a public or private elementary or secondary school, but rather to those attending a "public or private technical school, vocational school, college, university, or other institution of postsecondary education or a local board of education as provided in Code Section 16-11-130.1."[50]

Moreover, the bill also would have given permit holders the right to carry a gun on property owned by post-secondary educational institutions.[51] This extension would not have applied to athletic facilities or to student housing,[52] but would have given permit holders the right to carry a gun on any post-secondary educational institution's property if the institution authorized them to do so.[53]

Section 1-5 would have amended certain requirements to obtain a permit to carry a gun.[54] Primarily, the legislature intended this portion of the bill to create an exception to the requirement that a person be twenty-one to obtain a permit when the applicant is at least eighteen years old and has served in the military.[55] Additionally, section 1-5 would have prevented anyone who is adjudicated mentally incompetent to stand trial, registered sex offenders, and persons who have a guardian appointed due to alcohol or drug dependency from seeking a permit to carry.[56] Finally, this section would have prohibited any person from maintaining a database of gun permit holders.[57]

Section 1-7 would have created a new Code section, 16-1-130.1, which would have provided definitions and clarification of school areas where license holders could legally carry a gun.[58] This section also dealt with the process of allowing personnel who work on school

49. SB 101 (HCS), § 1-4, p. 6–7, ln. 196–206, 2013 Ga. Gen. Assem.
50. *Id.* § 1-4, p. 6–7, ln. 179–82, 204–06.
51. *Id.* § 1-5, p. 7, ln. 228–32.
52. *Id.*
53. *Id.* § 1-5, p. 7, ln. 233–37. Notably, the language "any license holder" would allow a permitted *student* to carry his or her weapon on campus.
54. *Id.* § 1-5, p. 9–14, ln. 279–465.
55. SB 101 (HCS), § 1-5, p. 9, ln. 295–301, 2013 Ga. Gen. Assem.
56. *Id.* § 1-5, p. 10, ln. 333–40.
57. *Id.* § 1-5, p. 14, ln. 460–61.
58. *Id.* § 1-7, p. 14–16, ln. 473–549.

premises to carry weapons.[59] Notably, the proposed language indicated that a school board would not have been allowed to require school personnel to carry weapons on campus and could further not retaliate against any personnel who refused to do so.[60]

Finally, section 2-2 would have amended subsection (a) of Code section 43-38-10 by changing the circumstances in which private detectives or security agencies may carry firearms.[61]

Analysis

Constitutional Considerations

In 2010, the United States Supreme Court issued an opinion holding the Second Amendment applies to the states.[62] However, SB 101 would likely not have faced any constitutional challenges because, unlike former Georgia statutes that were challenged on Second Amendment grounds, it sought to expand the right to carry.[63] Even so, several members of the legislature were concerned that imposing special licensing requirements on students who wished to carry was a violation of the Second Amendment.[64]

Other Legal Considerations

Had SB 101 passed, there could have been unintended consequences. Because the bill would have allowed some students and school personnel to carry weapons, the risk of a gun related accident occurring on campus would likely increase. Even so, the drafters of the bill believed that allowing these persons to carry guns would actually reduce the risk of violence on school campuses.[65] In

59. *Id.* § 1-7, p. 14–15, ln. 485–526.
60. *Id.* § 1-7, p. 15, ln. 511–516.
61. SB 101 (HCS), § 2-2, p. 18, ln. 628–30, 2013 Ga. Gen. Assem.
62. McDonald v. City of Chicago, 130 S. Ct. 3020, 3026 (2010).
63. *But see* GeorgiaCarry.Org, Inc. v. City of Roswell, 298 Ga. App. 686, 680 S.E. 2d 697 (2009).
64. *See* Ginn Interview, *supra* note 1; *see also* Video Recording of House Committee on Public Safety and Homeland Security, Mar. 13, 2013 at 41 min., 4 sec., (remarks by Rep. Dustin Hightower (R-68th)), http://www.house.ga.gov/committees/en-US/CommitteeArchives129.aspx [hereinafter House Committee Video] (discussing that if Georgia were to implement training requirements before a person could obtain a carry permit, the Second Amendment might be infringed).
65. *See* Ginn Interview, *supra* note 1.

fact, the provisions governing campus carry were added, in part, because of the shootings at Sandy Hook.[66]

The bill's prohibition on maintaining a database of permit holders might also have created issues. During the House Committee meeting, some expressed concern that the bill would prevent police officers from being able to quickly access permit data on the weekends, when probate judges are likely unavailable for consultation regarding whether a particular person is a valid license holder.[67] However, Senator Frank Ginn (R-47th) believed that SB 101 would not create any new problems because an officer would only check for a valid weapons permit if the person had already committed an offense; a stop would not be made solely to check for a weapons permit.[68] While an officer was investigating the underlying offense, he would be able to later determine whether the permit was valid through standard processes.[69]

Unfinished Business

Senator Ginn originally introduced SB 101 because he wanted to develop reciprocity between Georgia and other states regarding gun carrying permits.[70] However, the final version of the bill removed the provision granting permit holders from other states the right to carry in Georgia.[71] Moreover, as discussed above, the amended bill would have substantially changed Georgia's gun laws. Considering the intensity of the debate surrounding gun rights, it is not surprising the Georgia legislature was unable to reach a compromise regarding SB 101. Although the bill will likely resurface during the next legislative session, the bill's sponsors recognize it will almost certainly go through additional changes to increase the likelihood of its passage.[72]

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66. *Id*.
67. House Committee Video, *supra* note 64, at 38 min., 53 sec. (remarks by Laura Bordeaux).
68. *Id.* at 39 min., 9 sec. (remarks by Sen. Frank Ginn (R-47th)).
69. *Id.*
70. Ginn Interview, *supra* note 1.
71. *See* SB 101 (HCS), 2013 Ga. Gen. Assem.
72. *See* Ginn Interview, *supra* note 1.