

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia
2 Annotated, relating to the carrying and possession of firearms, so as to repeal provisions
3 relating to carrying a pistol without a license; to change provisions relating to a license to
4 carry a pistol or revolver and the issuance of a license; to provide for the term of such
5 license, exceptions, renewal, and revocation of such license; to provide for a private right of
6 action; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
10 relating to the carrying and possession of firearms, is amended by revising Code Section
11 16-11-129, relating to a license to carry a pistol or revolver, as follows:

12 "16-11-129.

13 (a) *Application for firearms license or renewal license; term.* ~~The judge of the probate~~
14 ~~court of each county may, on application under oath and on payment of a fee of \$15.00,~~
15 ~~issue a license or renewal license valid for a period of five years to any person whose~~
16 ~~domicile is in that county or who is on active duty with the United States armed forces and~~
17 ~~who is not a domiciliary of this state but who either resides in that county or on a military~~
18 ~~reservation located in whole or in part in that county at the time of such application, which~~
19 ~~license or renewal license shall authorize that person to carry any pistol or revolver in any~~
20 ~~county of this state notwithstanding any change in that person's county of residence or state~~
21 ~~of domicile. Applicants shall submit the application for a license or renewal license to the~~
22 ~~judge of the probate court on forms prescribed and furnished free of charge to persons~~
23 ~~wishing to apply for the license or renewal license. An applicant who is not a United States~~
24 ~~citizen shall provide sufficient personal identifying data, including without limitation his~~
25 ~~or her place of birth and United States issued alien or admission number, as the Georgia~~
26 ~~Bureau of Investigation may prescribe by rule or regulation. An applicant who is in~~

~~nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). Forms shall be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant. The Department of Public Safety shall furnish application forms and license forms required by this Code section. The forms shall be furnished to each judge of each probate court within the state at no cost. The Secretary of State shall, on application and payment of a fee of \$15.00, issue a firearms license valid for a period of five years to any person who is not ineligible for a firearms license pursuant to subsection (b) of this Code section which firearms license or renewal firearms license shall authorize that person to carry any pistol or revolver in any county of this state notwithstanding any change in that person's county of residence or state of domicile. The Secretary of State shall create forms for the purpose of applying for a firearms license. Such forms shall be designed to elicit information from the applicant pertaining to his or her eligibility under this Code section but shall not require information that is not pertinent, including, but not limited to, serial numbers or other identification information capable of being used as a de facto registration of firearms owned by the applicant. Forms shall not request the disclosure of the applicant's social security number. The Secretary of State shall make the application forms publicly available and shall post them on the Internet in a downloadable format. The Commissioner shall accept applications by mail.~~

(b) *Licensing exceptions.* No firearms license ~~or renewal license~~ shall be granted issued to:

- (1) Any person who is prohibited from possessing firearms pursuant to 18 U.S.C. Section 922(g);
 - (1.1) Any person under 21 years of age;
- (2) Any person who is a fugitive from justice or against whom proceedings are pending for any felony, forcible misdemeanor, or violation of Code Section 16-11-126, 16-11-127, or 16-11-128 until such time as the proceedings are adjudicated;
- (3) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation or any person who has been convicted of a forcible misdemeanor and has not been free of all restraint or supervision in connection therewith for at least five years or any person who has been convicted of a violation of Code Section 16-11-126, 16-11-127, or

64 16-11-128 and has not been free of all restraint or supervision in connection therewith for
65 at least three years, immediately preceding the date of the application;

66 (4) Any individual who has been hospitalized as an inpatient in any mental hospital or
67 alcohol or drug treatment center within five years of the date of his or her application.
68 The ~~probate judge~~ Secretary of State may require any applicant to sign a waiver
69 authorizing any mental hospital or treatment center to inform the judge whether or not the
70 applicant has been an inpatient in any such facility in the last five years and authorizing
71 the superintendent of such facility to make to the judge a recommendation regarding
72 whether a license to carry a pistol or revolver should be issued. When such a waiver is
73 required by the ~~probate judge~~ Secretary of State, the applicant shall pay to the probate
74 judge a fee of \$3.00 for reimbursement of the cost of making such a report by the mental
75 health hospital, alcohol or drug treatment center, or the Department of Human Resources,
76 which the ~~probate judge~~ Secretary of State shall remit to the hospital, center, or
77 department. The judge shall keep any such hospitalization or treatment information
78 confidential. It shall be at the discretion of the ~~probate judge~~ Secretary of State,
79 considering the circumstances surrounding the hospitalization and the recommendation
80 of the superintendent of the hospital or treatment center where the individual was a
81 patient, to issue the license or renewal license;

82 (5)(A) Any person, the provisions of paragraph (3) of this subsection notwithstanding,
83 who has been convicted of an offense arising out of the unlawful manufacture,
84 distribution, possession, or use of a controlled substance or other dangerous drug.

85 (B) As used in this paragraph, the term:

86 (i) 'Controlled substance' means any drug, substance, or immediate precursor
87 included in the definition of controlled substances in paragraph (4) of Code Section
88 16-13-21.

89 (ii) 'Convicted' means a plea of guilty, a finding of guilt by a court of competent
90 jurisdiction, the acceptance of a plea of nolo contendere, or the affording of first
91 offender treatment by a court of competent jurisdiction irrespective of the pendency
92 or availability of an appeal or an application for collateral relief.

93 (iii) 'Dangerous drug' means any drug defined as such in Code Section 16-13-71; or

94 (6) Any person not lawfully present in the United States.

95 ~~(e) *Fingerprinting.* Following completion of the application for a license or the renewal~~
96 ~~of a license, the judge of the probate court shall require the applicant to proceed to an~~
97 ~~appropriate law enforcement agency in the county with the completed application. The~~
98 ~~appropriate local law enforcement agency in each county shall then capture the fingerprints~~
99 ~~of the applicant for a license or renewal license to carry a pistol or revolver, place the~~
100 ~~fingerprint required by subsection (f) of this Code section on a blank license form which~~

101 ~~has been furnished to the law enforcement agency by the judge of the probate court, and~~
102 ~~place the name of the applicant on the blank license form. The law enforcement agency~~
103 ~~shall be entitled to a fee of \$5.00 from the applicant for its services in connection with the~~
104 ~~application.~~

105 ~~(d) *Investigation of applicant; issuance of license; renewal.*~~

106 ~~(1) For both license applications and requests for license renewals, the judge of the~~
107 ~~probate court shall within two business days following the receipt of the application or~~
108 ~~request direct the law enforcement agency to request a fingerprint based criminal history~~
109 ~~records check from the Georgia Crime Information Center and Federal Bureau of~~
110 ~~Investigation for purposes of determining the suitability of the applicant and return an~~
111 ~~appropriate report to the judge of the probate court. Fingerprints shall be in such form~~
112 ~~and of such quality as prescribed by the Georgia Crime Information Center and under~~
113 ~~standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of~~
114 ~~Investigation may charge such fee as is necessary to cover the cost of the records search.~~

115 ~~(2) For both license applications and requests for license renewals, the judge of the~~
116 ~~probate court shall within two business days following the receipt of the application or~~
117 ~~request also direct the law enforcement agency to conduct a background check using the~~
118 ~~Federal Bureau of Investigation's National Instant Criminal Background Check System~~
119 ~~and return an appropriate report to the probate judge.~~

120 ~~(3) When a person who is not a United States citizen applies for a license or renewal of~~
121 ~~a license under this Code section, the judge of the probate court shall direct the law~~
122 ~~enforcement agency to conduct a search of the records maintained by the United States~~
123 ~~Bureau of Immigration and Customs Enforcement. As a condition to the issuance of a~~
124 ~~license or the renewal of a license, an applicant who is in nonimmigrant status shall~~
125 ~~provide proof of his or her qualifications for an exception to the federal firearm~~
126 ~~prohibition pursuant to 18 U.S.C. Section 922(y).~~

127 ~~(4) The law enforcement agency shall report to the judge of the probate court within 30~~
128 ~~days, by telephone and in writing, of any findings relating to the applicant which may~~
129 ~~bear on his or her eligibility for a license or renewal license under the terms of this Code~~
130 ~~section. When no derogatory information is found on the applicant bearing on his or her~~
131 ~~eligibility to obtain a license or renewal license, a report shall not be required. The law~~
132 ~~enforcement agency shall return the application and the blank license form with the~~
133 ~~fingerprint thereon directly to the judge of the probate court within such time period. Not~~
134 ~~later than ten days after the judge of the probate court receives the report from the law~~
135 ~~enforcement agency concerning the suitability of the applicant for a firearms license, the~~
136 ~~judge of the probate court shall issue such applicant a license or renewal license to carry~~
137 ~~any pistol or revolver unless facts establishing ineligibility have been reported or unless~~

138 ~~the judge determines such applicant has not met all the qualifications, is not of good~~
139 ~~moral character, or has failed to comply with any of the requirements contained in this~~
140 ~~Code section. The judge of the probate court shall date stamp the report from the law~~
141 ~~enforcement agency to show the date on which the report was received by the judge of~~
142 ~~the probate court.~~

143 ~~(e) *Revocation, loss, or damage to license.* If, at any time during the period for which the~~
144 ~~license was issued, the judge of the probate court of the county in which the license was~~
145 ~~issued shall learn or have brought to his or her attention in any manner any reasonable~~
146 ~~ground to believe the licensee is not eligible to retain the license, the judge may, after~~
147 ~~notice and hearing, revoke the license of the person upon adjudication of falsification of~~
148 ~~application, mental incompetency, chronic alcohol or narcotic usage, conviction of any~~
149 ~~felony or forcible misdemeanor, or for violation of Code Section 16-11-126, 16-11-127,~~
150 ~~or 16-11-128. It shall be unlawful for any person to possess a license which has been~~
151 ~~revoked, and any person found in possession of any such revoked license, except in the~~
152 ~~performance of his or her official duties, shall be guilty of a misdemeanor. It shall be~~
153 ~~required that any license holder under this Code section have in his or her possession his~~
154 ~~or her valid license whenever he or she is carrying a pistol or revolver under the authority~~
155 ~~granted by this Code section, and his or her failure to do so shall be prima-facie evidence~~
156 ~~of a violation of Code Section 16-11-128. Loss of any license issued in accordance with~~
157 ~~this Code section or damage to the license in any manner which shall render it illegible~~
158 ~~shall be reported to the judge of the probate court of the county in which it was issued~~
159 ~~within 48 hours of the time the loss or damage becomes known to the license holder. The~~
160 ~~judge of the probate court shall thereupon issue a replacement for and shall take custody~~
161 ~~of and destroy a damaged license; and in any case in which a license has been lost, he or~~
162 ~~she shall issue a cancellation order and notify by telephone and in writing each of the law~~
163 ~~enforcement agencies whose records were checked before issuance of the original license.~~
164 ~~The judge shall charge the fee specified in subsection (k) of Code Section 15-9-60 for such~~
165 ~~services.~~

166 ~~(f) *License specifications.* Licenses issued as prescribed in this Code section shall be~~
167 ~~printed on durable but lightweight card stock, and the completed card shall be laminated~~
168 ~~in plastic to improve its wearing qualities and to inhibit alterations. Measurements shall~~
169 ~~be 3 1/4 inches long, and 2 1/4 inches wide. Each shall be serially numbered within the~~
170 ~~county of issuance and shall bear the full name, residential address, birth date, weight,~~
171 ~~height, color of eyes, sex, and a clear print of the right index finger of the licensee. If the~~
172 ~~right index fingerprint cannot be secured for any reason, the print of another finger may be~~
173 ~~used but such print shall be marked to identify the finger from which the print is taken.~~
174 ~~The license shall show the date of issuance, the expiration date, and the probate court in~~

175 which issued and shall be signed by the licensee and bear the signature or facsimile thereof
176 of the judge. The seal of the court shall be placed on the face before the license is
177 laminated. The reverse side of the license shall have imprinted thereon in its entirety Code
178 Section 16-11-127.

179 ~~(g)(c)~~ *Alteration or counterfeiting of license; penalty.* A person who deliberately alters
180 or counterfeits such a license card commits a felony and, upon conviction thereof, shall be
181 punished by imprisonment for a period of not less than one nor more than five years.

182 ~~(h)~~ *Licenses for former law enforcement officers.* Except as otherwise provided in Code
183 Section 16-11-130, any person who has served as a law enforcement officer for at least ten
184 of the 12 years immediately preceding the retirement of such person as a law enforcement
185 officer shall be entitled to be issued a license as provided for in this Code section without
186 the payment of any of the fees provided for in this Code section. Such person must comply
187 with all the other provisions of this Code section relative to the issuance of such licenses.
188 As used in this subsection, the term 'law enforcement officer' means any peace officer who
189 is employed by the United States government or by the State of Georgia or any political
190 subdivision thereof and who is required by the terms of his or her employment, whether by
191 election or appointment, to give his or her full time to the preservation of public order or
192 the protection of life and property or the prevention of crime. Such term shall include
193 conservation rangers.

194 ~~(i)~~ *Temporary renewal licenses.*

195 (1) Any person who holds a license under this Code section to carry a pistol or revolver
196 may, at the time he applies for a renewal of the license, also apply for a temporary
197 renewal license if less than 90 days remain before expiration of the license he then holds
198 or if his previous license has expired within the last 30 days.

199 (2) Unless the judge of the probate court knows or is made aware of any fact which
200 would make the applicant ineligible for a five-year renewal license, the judge shall at the
201 time of application issue a temporary renewal license to the applicant.

202 (3) Such a temporary renewal license shall be in the form of a paper receipt indicating
203 the date on which the court received the renewal application and shall show the name,
204 address, sex, age, and race of the applicant and that the temporary renewal license expires
205 90 days from the date of issue.

206 (4) During its period of validity the temporary renewal permit, if carried on or about the
207 holder's person together with the holders previous license, shall be valid in the same
208 manner and for the same purposes as a five-year license.

209 (5) A \$1.00 fee shall be charged by the probate court for issuance of a temporary renewal
210 license.

211 ~~(6) A temporary renewal license may be revoked in the same manner as a five-year~~
212 ~~license.~~

213 ~~(j) When an eligible applicant who is a United States citizen fails to receive a license,~~
214 ~~temporary permit, or renewal license within the time period required by this Code section~~
215 ~~and the application or request has been properly filed, the applicant may bring an action in~~
216 ~~mandamus or other legal proceeding in order to obtain a license, temporary license, or~~
217 ~~renewal license, and such applicant shall be entitled to recover his or her costs in such~~
218 ~~action, including reasonable attorney's fees.~~

219 (d) *First time applicants.* For the purposes of this subsection, a person who has a valid
220 firearms license issued under this Code section as it existed on June 30, 2009, shall not be
221 considered to be applying for a firearms license for the first time under this Code section.
222 A person applying for a firearms license for the first time shall have his or her fingerprints
223 captured by a law enforcement agency or state authorized contractor. Fingerprints shall be
224 in such form and of such quality as prescribed by the Georgia Crime Information Center
225 and under standards adopted by the Federal Bureau of Investigation. The Secretary of State
226 shall submit fingerprints captured for the purposes of obtaining a firearms license to the
227 Georgia Crime Information Center for a background check. The agency or contractor may
228 charge a fee not to exceed \$25.00 for capturing the fingerprints and running the background
229 check.

230 (e) *First time and renewal applicants.* The Secretary of State shall perform a background
231 check using the Federal Bureau of Investigation's National Instant Criminal Background
232 Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18
233 U.S.C. Section 921, et seq., on every applicant to determine eligibility for a firearms
234 license in accordance with subsection (b) of this Code section. The Secretary of State shall
235 perform the background check using the National Instant Criminal Background Check
236 System within five days of receipt of an application for a firearms license. A person may
237 apply for a renewal firearms license up to 90 days before and 30 days after the expiration
238 of his or her current firearms license. When a person who is not a United States citizen
239 applies for a license or renewal of a license under this Code section, the judge of the
240 probate court shall direct the law enforcement agency to conduct a search of the records
241 maintained by the United States Bureau of Immigration and Customs Enforcement. As a
242 condition to the issuance of a license or the renewal of a license, an applicant who is in
243 nonimmigrant status shall provide proof of his or her qualifications for an exception to the
244 federal firearm prohibition pursuant to 18 U.S.C. Section 922(y).

245 (f) *Administrative contracts.* The Secretary of State shall be authorized to enter into
246 contracts with private persons and entities to perform administrative functions relating to
247 Georgia Crime Information Center background checks.

248 (g) Issuance of firearms license. The Secretary of State shall issue a firearms license
249 within five days of completion of the background check using the Federal Bureau of
250 Investigation's National Instant Criminal Background Check System. For first time
251 applicants, if the fingerprint based background check is not available at the time of issuance
252 and later reveals material falsification of the application or grounds for ineligibility of a
253 firearms license, the Secretary of State may commence proceedings to revoke the firearms
254 license pursuant to subsection (h) of this Code section. A firearms license issued pursuant
255 to this Code section shall be valid for a period of five years.

256 (h) Lost or damaged firearms license. If a firearms license issued under this Code section
257 becomes lost, stolen, or damaged, the licensee shall report such fact to the Secretary of
258 State, who shall issue a replacement firearms license within five days of receiving such
259 report. The Secretary of State may charge a fee not to exceed \$5.00 for a replacement
260 firearms license. No background checks shall be performed for issuing a replacement
261 firearms license.

262 (i) Revocation of firearms license. If the Secretary of State learns of any factor that
263 renders a licensee ineligible for a firearms license, the Secretary of State may initiate
264 revocation proceedings pursuant to Chapter 13 of Title 50, the 'Georgia Administrative
265 Procedure Act.' Upon revocation, the licensee shall surrender his or her firearms license
266 to the Secretary of State. Any person who uses a revoked firearms license for any purpose
267 shall be punished as for a misdemeanor.

268 (j) Private right of action. If an eligible applicant does not receive a firearms license or
269 replacement firearms license as required by this Code section, the applicant may bring an
270 action for mandamus or other legal proceeding in order to obtain a firearms license or
271 replacement firearms license, and such applicant shall be entitled to recover his or her costs
272 in such action, including reasonable attorney's fees.

273 (k) Implementation. The Secretary of State shall make and publish such rules and
274 regulations as he or she deems necessary to implement this Code section."

275 SECTION 2.

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