

Senate Bill 281 - Prefile

By: Senator James of the 35th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16, Code Section 15-11-2, and Code Section
2 20-2-1184 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities
3 and practices, definitions regarding the Juvenile Code, and reporting of students committing
4 prohibited acts, respectively, so as to prohibit the possession of automatic and
5 semi-automatic guns; to revise and provide for definitions; to revise the nomenclature for
6 weapons which shoot or are designed to shoot, automatically, more than six shots, without
7 manual reloading, by a single function of the trigger; to prohibit the possession of large
8 capacity magazines; to provide for exceptions; to subject all transfers or purchases of
9 firearms at gun shows to the National Instant Criminal Background Check System; to
10 provide for facilitation by licensed dealers; to provide for requirements for the securing or
11 storage of inventory firearms when a dealer is not open for business; to conform
12 cross-references; to provide for related matters; to repeal conflicting laws; and for other
13 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 2, relating to
19 possession of dangerous weapons, as follows:

20 "Part 2

21 16-11-120.

22 This part shall be known and may be cited as the 'Georgia Firearms and Weapons Act.'

23 16-11-121.

24 As used in this part, the term:

25 (1) 'Automatic or semi-automatic gun' means any weapon which shoots or is designed
 26 to shoot:

27 (A) Automatically, more than six shots, without manual reloading, by a single function
 28 of the trigger; or

29 (B) Without any action needed to fire consecutive shots, other than having ammunition
 30 loaded in such weapon's feeding device.

31 (2) 'Dangerous weapon' means any weapon commonly known as a 'rocket launcher,'
 32 'bazooka,' or 'recoilless rifle' which fires explosive or nonexplosive rockets designed to
 33 injure or kill personnel or destroy heavy armor, or similar weapon used for such purpose.
 34 The term shall also mean a weapon commonly known as a 'mortar' which fires high
 35 explosive from a metallic cylinder and which is commonly used by the armed forces as
 36 an antipersonnel weapon or similar weapon used for such purpose. The term shall also
 37 mean a weapon commonly known as a 'hand grenade' or other similar weapon which is
 38 designed to explode and injure personnel, or similar weapon used for such purpose.

39 ~~(2) 'Machine gun' means any weapon which shoots or is designed to shoot,~~
 40 ~~automatically, more than six shots, without manual reloading, by a single function of the~~
 41 ~~trigger.~~

42 (3) 'Large capacity magazine' means any ammunition feeding device with the capacity
 43 to accept more than ten rounds of ammunition; provided, however, that such term shall
 44 not include:

45 (A) A feeding device that has been permanently altered so that it cannot accommodate
 46 more than ten rounds;

47 (B) A .22 caliber tube ammunition feeding device; or

48 (C) A tubular magazine that is contained in a lever-action firearm.

49 (4) 'Person' means any individual, partnership, company, association, or corporation.

50 ~~(4)~~(5) 'Sawed-off rifle' means a weapon designed or redesigned, made or remade, and
 51 intended to be fired from the shoulder; and designed or redesigned, made or remade, to
 52 use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile
 53 through a rifle bore for each single pull of the trigger; and which has a barrel or barrels
 54 of less than 16 inches in length or has an overall length of less than 26 inches.

55 ~~(5)~~(6) 'Sawed-off shotgun' means a shotgun or any weapon made from a shotgun whether
 56 by alteration, modification, or otherwise having one or more barrels less than 18 inches
 57 in length or if such weapon as modified has an overall length of less than 26 inches.

58 ~~(6)~~(7) 'Shotgun' means a weapon designed or redesigned, made or remade, and intended
 59 to be fired from the shoulder; and designed or redesigned, and made or remade, to use the

60 energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a
61 number of ball shot or a single projectile for each single pull of the trigger.

62 ~~(7)~~(8) 'Silencer' means any device for silencing or diminishing the report of any portable
63 weapon such as a rifle, carbine, pistol, revolver, ~~machine~~ automatic or semi-automatic
64 gun, shotgun, fowling piece, or other device from which a shot, bullet, or projectile may
65 be discharged by an explosive.

66 16-11-122.

67 No person shall have in his or her possession any sawed-off shotgun, sawed-off rifle,
68 ~~machine~~ automatic or semi-automatic gun, large capacity magazine, dangerous weapon,
69 or silencer except as provided in Code Section 16-11-124.

70 16-11-123.

71 A person commits the offense of unlawful possession of firearms or weapons when he or
72 she knowingly has in his or her possession any sawed-off shotgun, sawed-off rifle, ~~machine~~
73 automatic or semi-automatic gun, large capacity magazine, dangerous weapon, or silencer,
74 and, upon conviction thereof, he or she shall be punished by imprisonment for a period of
75 five years.

76 16-11-124.

77 This part shall not apply to:

78 (1) A peace officer of any duly authorized police agency of this state or of any political
79 subdivision thereof, or a law enforcement officer of any department or agency of the
80 United States who is regularly employed and paid by the United States, this state, or any
81 such political subdivision, or an employee of the Department of Corrections of this state
82 who is authorized in writing by the commissioner of corrections to transfer or possess
83 such firearms while in the official performance of his or her duties;

84 (2) A member of the National Guard or of the armed forces of the United States to wit:
85 the army, navy, marine corps, air force, or coast guard who, while serving therein,
86 possesses such firearm in the line of duty;

87 (3) Any sawed-off shotgun, sawed-off rifle, ~~machine~~ automatic or semi-automatic gun,
88 large capacity magazine, dangerous weapon, or silencer which has been modified or
89 changed to the extent that it is inoperative. Examples of the requisite modification
90 include weapons with their barrel or barrels filled with lead, hand grenades filled with
91 sand, or other nonexplosive materials;

92 (4) Possession of a sawed-off shotgun, sawed-off rifle, ~~machine~~ automatic or
93 semi-automatic gun, dangerous weapon, or silencer by a person who is authorized to

94 possess the same because he or she has registered the sawed-off shotgun, sawed-off rifle,
 95 ~~machine~~ automatic or semi-automatic gun, large capacity magazine, dangerous weapon,
 96 or silencer in accordance with the dictates of the National Firearms Act, 68A Stat. 725
 97 (26 U.S.C. Sections 5841-5862); and

98 (5) A security officer employed by a federally licensed nuclear power facility or a
 99 licensee of such facility, including a contract security officer, who is trained and qualified
 100 under a security plan approved by the United States Nuclear Regulatory Commission or
 101 other federal agency authorized to regulate nuclear facility security; provided, however,
 102 that this exemption shall apply only while such security officer is acting in connection
 103 with his or her official duties on the premises of such nuclear power facility or on
 104 properties outside the facility property pursuant to a written agreement entered into with
 105 the local law enforcement agency having jurisdiction over the facility. The exemption
 106 under this paragraph does not include the possession of silencers.

107 16-11-125.

108 In any complaint, accusation, or indictment and in any action or proceeding brought for the
 109 enforcement of this part it shall not be necessary to negative any exception, excuse,
 110 proviso, or exemption contained in this part, and the burden of proof of any such exception,
 111 excuse, proviso, or exemption shall be upon the defendant."

112 **SECTION 1-2.**

113 Said article is further amended by revising paragraph (3) of subsection (b) of Code Section
 114 16-11-127.1, relating to carrying weapons within school safety zones, at school functions,
 115 or on a bus or other transportation furnished by a school, as follows:

116 "(3) Any person convicted of a violation of this subsection involving a dangerous
 117 weapon or ~~machine~~ automatic or semi-automatic gun, as such terms are defined in Code
 118 Section 16-11-121, shall be punished by a fine of not more than \$10,000.00 or by
 119 imprisonment for a period of not less than five nor more than ten years, or both."

120 **SECTION 1-3.**

121 Said article is further amended by revising paragraph (1) of subsection (a) of Code Section
 122 16-11-160, relating to use of machine guns, sawed-off rifles, sawed-off shotguns, or firearms
 123 with silencers during commission of certain offenses and enhanced criminal penalties, as
 124 follows:

125 "(a)(1) It shall be unlawful for any person to possess or to use ~~a machine~~ an automatic
 126 or semi-automatic gun, sawed-off rifle, sawed-off shotgun, or firearm equipped with a

- 127 silencer, as those terms are defined in Code Section 16-11-121, during the commission
 128 or the attempted commission of any of the following offenses:
- 129 (A) Aggravated assault as defined in Code Section 16-5-21;
 - 130 (B) Aggravated battery as defined in Code Section 16-5-24;
 - 131 (C) Robbery as defined in Code Section 16-8-40;
 - 132 (D) Armed robbery as defined in Code Section 16-8-41;
 - 133 (D.1) Home invasion in any degree as defined in Code Section 16-7-5;
 - 134 (E) Murder or felony murder as defined in Code Section 16-5-1;
 - 135 (F) Voluntary manslaughter as defined in Code Section 16-5-2;
 - 136 (G) Involuntary manslaughter as defined in Code Section 16-5-3;
 - 137 (H) Sale, possession for sale, transportation, manufacture, offer for sale, or offer to
 138 manufacture controlled substances in violation of any provision of Article 2 of Chapter
 139 13 of this title, the 'Georgia Controlled Substances Act';
 - 140 (I) Terroristic threats or acts as defined in Code Section 16-11-37;
 - 141 (J) Arson as defined in Code Section 16-7-60, 16-7-61, or 16-7-62 or arson of lands as
 142 defined in Code Section 16-7-63;
 - 143 (K) Influencing witnesses as defined in Code Section 16-10-93; and
 - 144 (L) Participation in criminal gang activity as defined in Code Section 16-15-4."

145 **SECTION 1-4.**

146 Said article is further amended by revising Code Section 16-11-171, relating to Brady Law
 147 definitions, as follows:

148 "16-11-171.

149 As used in this part, the term:

- 150 (1) 'Center' means the Georgia Crime Information Center within the Georgia Bureau of
 151 Investigation.
- 152 (2) 'Dealer' means any person licensed as a dealer pursuant to 18 U.S.C. Section 921, et
 153 seq.
- 154 (3) 'Firearm' means any weapon that is designed to or may readily be converted to expel
 155 a projectile by the action of an explosive or the frame or receiver of any such weapon,
 156 any firearm muffler or firearm silencer, or any destructive device as defined in 18 U.S.C.
 157 Section 921(a)(3).
- 158 (4) 'Gun show' means any event, function, or marketplace at which 25 or more firearms
 159 are offered or exhibited for sale, transfer, or exchange.
- 160 (5) 'Gun show vendor' means any person that offers for sale, exhibits, sells, transfers, or
 161 exchanges one or more firearms at a gun show.

162 (6) 'Involuntarily hospitalized' means hospitalized as an inpatient in any mental health
 163 facility pursuant to Code Section 37-3-81 or hospitalized as an inpatient in any mental
 164 health facility as a result of being adjudicated mentally incompetent to stand trial or being
 165 adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of
 166 Article 6 of Title 17.

167 ~~(5)~~(7) 'NICS' means the National Instant Criminal Background Check System created
 168 by the federal 'Brady Handgun Violence Prevention Act' (P. L. No. 103-159)."

169 **SECTION 1-5.**

170 Said article is further amended by revising subsection (a) of Code Section 16-11-172, relating
 171 to transfers or purchases of firearms subject to the NICS, information concerning persons
 172 who have been involuntarily hospitalized to be forwarded to the FBI, penalties for breach of
 173 confidentiality, and exceptions, as follows:

174 "(a) All transfers or purchases of firearms conducted by a licensed importer, licensed
 175 manufacturer, gun show vendor, or licensed dealer shall be subject to the NICS. To the
 176 extent possible, the center shall provide to the NICS all necessary criminal history
 177 information and wanted person records in order to complete an NICS check. A gun show
 178 vendor may contract with a licensed dealer for purposes of facilitating transfers, purchases,
 179 or NICS checks."

180 **SECTION 1-6.**

181 Said article is further amended by adding a new Code section to read as follows:

182 "16-11-174.

183 When a dealer is not open for business, all inventory firearms in such dealer's place of
 184 business shall be secured or stored by using one of the following methods appropriate to
 185 each firearm:

186 (1) Secure the firearm with a hardened steel rod or cable at least one-eighth of an inch
 187 in diameter through the trigger guard of such firearm. The steel rod or cable shall be
 188 secured with a hardened steel lock that has a shackle. The lock and shackle shall be
 189 protected or shielded from the use of a bolt cutter, and the rod or cable shall be anchored
 190 in a manner that prevents the removal of such firearm from the premises; or

191 (2) Store the firearm in a locked fireproof safe or vault at the dealer's place of business."

192

PART II

193

SECTION 2-1.

194 Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to definitions
195 regarding the Juvenile Code, is amended by revising subdivision (13)(N)(i)(II) as follows:

196 “(II) Dangerous weapon or ~~machine~~ automatic or semi-automatic gun, as defined
197 in Code Section 16-11-121; or”

198

SECTION 2-2.

199 Code Section 20-2-1184 of the Official Code of Georgia Annotated, relating to reporting of
200 students committing prohibited acts, is amended by revising paragraph (2) of subsection (a)
201 as follows:

202 “(2) Dangerous weapon or ~~machine~~ automatic or semi-automatic gun, as defined in Code
203 Section 16-11-121; or”

204

PART III

205

SECTION 3-1.

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