

HOUSE BILL 218<sup>1</sup>: CRIMES AND OFFENSES; WEAPONS CARRY LICENSE  
RECIPROCITY IN THIS STATE; EXPAND

*Amending O.C.G.A. § 16-11-126, and Repealing All Laws in Conflict with  
the Same*

**First signature:** Representative Mandi Ballinger (23<sup>rd</sup>)

**Co-Sponsors:** Representative Alan Powell (32<sup>nd</sup>), Representative Rick Jasperse (11<sup>th</sup>), Representative Clay Pirkle (155<sup>th</sup>), Representative Darlene Taylor (173<sup>rd</sup>), Senator Bo Hatchett (50<sup>th</sup>)

**Summary:** “The purpose of this Bill is to amend Code Section 16-11-126 of the Official Code of Georgia Annotated, relating to having or carrying handguns, long guns, or other weapons, license requirement, and exceptions for homes, motor vehicles, private property, and other locations and conditions, so as to expand weapons carry license reciprocity in this state; to provide that persons who are not residents of this state shall be authorized to carry a weapon in this state if licensed to carry in any other state; to provide that the Attorney General shall enter into an agreement with any state that requires an agreement to recognize and give effect to weapons carry licenses for reciprocity; to provide for related matters; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** Senate Passed, Adopted by Substitute March 29, 2021.<sup>3</sup>

TEXT OF HOUSE BILL 218 (COMMITTEE SUBSTITUTE LC 39 3075-ECS)

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To amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, so as to expand weapons carry license reciprocity in this state; to provide that persons who are not residents of this state shall be authorized to carry a

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<sup>1</sup> H.B. 218, 156th Gen. Assemb., 2nd Reg. Sess. (Ga. 2021), available at <https://www.legis.ga.gov/api/legislation/document/20212022/198031> (last visited Dec. 26, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> 2020-2021 Regular Session-HB 218, *Crimes and offenses; weapons carry license reciprocity in this state; expand*, available at GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/59180> (Mar. 29, 2021) [hereinafter H.B. 218 Status Sheet].

<sup>4</sup> H.B. 218

weapon in this state if licensed to carry in any other state; to provide that the Attorney General shall enter into an agreement with any state that requires an agreement to recognize and give effect to weapons carry licenses for reciprocity; to provide for online application for weapons carry licenses and renewal licenses; to provide for relief; to amend Code Section 17-5-54 of the Official Code of Georgia Annotated, relating to definitions and disposition of personal property in custody of law enforcement agency, so as to revise requirements for the disposition of firearms in custody of law enforcement agencies; to provide for causes of action; to amend Title 38 of the Official Code of Georgia Annotated, relating to military, emergency management, and veterans affairs, so as to provide for prohibited actions by government official or employee during declared state of emergency; to provide limits upon the emergency powers of the Governor; to provide for civil remedy; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

### SECTION 1.

Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, is amended in Code Section 16-11-126, relating to having or carrying handguns, long guns, or other weapons, license requirement, 22 and exceptions for homes, motor vehicles, private property, and other locations and 23 conditions, by revising subsection (e) as follows:

"(e)(1)(A) Any person licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state, but only while the licensee is not a resident of this state; provided, however, that:

- (i) Such licensee licensed to carry a weapon in any other state shall carry the weapon in compliance with the laws of this state; and
- (ii) No other state shall be required to recognize and give effect to a license issued pursuant to this part that is held by a person who is younger than 21 years of age. (B)(i) The Attorney General shall create and maintain on the Department of Law's website a list of states whose laws recognize and give effect to a license issued pursuant to this part.
- (iii) The Attorney General shall enter into an agreement with any state that requires an agreement to recognize and give effect to a license issued pursuant to this part.

(2) Any person who is not a weapons carry license holder in this state and who is licensed to carry a weapon in any other state whose laws recognize

and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state for 90 days after he or she becomes a resident of this state; provided, however, that such person shall carry the weapon in compliance with the laws of this state, shall as soon as practicable submit a weapons carry license application as provided for under Code Section 16-11-129, and shall remain licensed in such other state for the duration of time.

## SECTION 2.

Said part is further amended in Code Section 16-11-129, relating to weapons carry, gun safety information, temporary renewal permit, mandamus, and verification of license, by adding a new paragraph to subsection (a) and revising subsection (k) as follows:

"(4) The judge of the probate court shall be authorized to implement online application processes for weapons carry licenses and renewal licenses. The probate court shall also be authorized to accept a weapons carry license or renewal license application by first-class mail."

"(k) Data base prohibition.

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

(2) Any person aggrieved by a violation of this subsection may bring an action for relief against a public officer in his or her official capacity. Such person who proves by a preponderance of the evidence that he or she is or was included in such a multijurisdictional data base shall be entitled to obtain, in addition to appropriate declaratory or injunctive relief, expenses of litigation, including costs and reasonable attorney's fees.

## SECTION 3.

Code Section 17-5-54 of the Official Code of Georgia Annotated, definitions and disposition of personal property in custody of law enforcement agency, is amended by revising subsection (g) as follows:

"(g)(1) With respect to unclaimed firearms, if the sheriff, chief of police, agency director, or designee of such official certifies that a firearm is unsafe because of wear, damage, age, or modification or

because any federal or state law prohibits the sale or distribution of such firearm, at the discretion of such official, it shall be transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation, a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed. (2) Otherwise, an unclaimed firearm:

(A) Possessed by a municipal corporation shall be disposed of as provided for in Code Section 36-37-6; provided, however, that municipal corporations shall not have the right to reject any bids or to cancel any proposed sale of such firearms, and all sales to persons may be to any person, but the transfer of such firearms shall only be to persons, specified by the winning bidders, who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such firearms under the terms of such license. The municipal corporation shall dispose of all such firearms at least once every 12 months whenever the municipal corporation has an inventory of five or more firearms. If a municipal corporation does not dispose of such firearms as required by this Code section, a person interested in acquiring any such firearms may bring an action in mandamus or other legal proceeding to compel the disposition. A prevailing plaintiff in such an action shall be entitled to his or her costs, including reasonable attorney's fees; or

(B) Possessed by the state or a political subdivision other than a municipal corporation, shall be disposed of by sale at public auction to persons. While any person may bid at auction, the transfer of such firearms shall only be to persons, specified by the winning bidders, who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such firearms under the terms of such license. Auctions required by this subparagraph may occur online on a rolling basis or at live events, but in no event shall such auctions occur less frequently than once every 12 months during any time in which the political subdivision or state custodial agency has an inventory of five or more saleable firearms. If the state or a political subdivision other than a municipal corporation does not dispose of such firearms as required by this Code section, a person interested in acquiring any such firearms may bring an action in mandamus or other legal proceeding to compel the disposition. A prevailing plaintiff in such an action shall be entitled to his or her costs, including reasonable attorney's fees.

(3) If no bids from eligible recipients are received within six months from when bidding opened on a firearm offered for sale pursuant to paragraph (2) of this subsection, the firearm shall be transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation, a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed.

#### SECTION 4.

Title 38 of the Official Code of Georgia Annotated, relating to military, emergency management, and veterans affairs, is amended by revising Code Section 38-3-37, relating to prohibited actions by government official or employee during declared state of emergency, as follows:

"38-3-37.

(a) As used in this Code section, the term:

- (1) 'Firearm' means any handgun, rifle, shotgun, or similar device or weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.
- (2) 'License holder' shall have the same meaning as set forth in Code Section 16-11-125.1.
- (3) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-125.1.

(b) No official or employee of the state or any political subdivision thereof, member of the National Guard in the service of the state, or any person operating pursuant to or under color of state law, while acting during or pursuant to a declared state of emergency, shall:

- (1) ~~Temporarily or permanently seize~~, Seize or authorize the seizure of, any firearm, or ammunition ~~or~~ any component thereof, ammunition reloading equipment and supplies, or weapon, the possession of which was not prohibited by law at the time immediately prior to the declaration of a state of emergency, and other than as provided by the criminal or forfeiture laws of this state;
- (2) Prohibit possession of any firearm, or ammunition or any component thereof, ammunition reloading equipment and supplies, or weapon, or promulgate any rule, regulation, or order prohibiting possession of ~~any firearm or ammunition or any component thereof~~ if such if

possession was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency;

- (3) Prohibit any license holder from carrying any weapon or promulgate any rule, regulation, or order prohibiting such carrying if such carrying was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency; ~~or~~
- (4) Prohibit the manufacture, sale, or transfer of any firearm, ammunition or any component thereof, ammunition reloading equipment and supplies, or weapon, or promulgate any rule, regulation, or order prohibiting the manufacture, sale, or transfer of such if the manufacture, sale, or transfer was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency;
- (5) Suspend or revoke any weapons carry license issued pursuant to Code Section 16-11-129, except as authorized by such Code section;
- (6) Refuse to accept an application for a weapon carry license which has been properly submitted in accordance with Code Section 16-11-129 if the building or courthouse is otherwise open to the public; provided, however, that no probate judge shall be responsible for any delay or closure caused by circumstances or actions outside of the control of such probate judge;
- (7) Close or limit the operational hours of or place any other restrictions upon any business engaged in the lawful manufacture, sale, or repair of firearms, ammunition or any component thereof, ammunition reloading equipment and supplies, or weapons unless closure, limitation upon hours, or other restrictions have been required of all businesses within the jurisdiction;
- (8) Close or limit the operational hours of any lawful indoor or outdoor shooting range unless closure or limitation upon hours has been required of all businesses within the jurisdiction; or

- (4)(9) Require the registration of any firearm.
- (b) Any individual who is a lawful resident of the United States, is authorized to possess a firearm under the laws of this state, and is or has been subject to an act, rule, regulation, or order in violation of this Code section may bring an action in mandamus or other legal proceeding against a public entity or public officer in his or her official capacity to obtain declaratory or injunctive relief. A prevailing plaintiff in such action shall be entitled to recover his or her costs in such action, including reasonable attorney's fees.

### SECTION 5.

Said title is further amended in Code Section 38-3-51, relating to emergency powers of Governor, termination of emergency, limitations in emergency, and immunity, by revising paragraph (1) of subsection (d) as follows:

"(1) Suspend any regulatory statute, other than Code Section 38-3-37, prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;"

### SECTION 6.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

### SECTION 7.

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

### SPONSOR'S RATIONALE

On the heels of O.C.G.A. § 16-11-126 having been challenged on constitutional grounds before in the Georgia Supreme Court,<sup>5</sup> Republican Representative Mandi Ballinger, who represents Cherokee County, authored

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<sup>5</sup> *Lindsey v. State*, 277 Ga. 772, 596 S.E.2d 140, (Ga. 2007).

and sponsored House Bill 218.<sup>6</sup> Ballinger characterized the Bill as a “very simple little housekeeping gun Bill.”<sup>7</sup> Prior to the introduction of this Bill, Georgians were restricted to acquiring a conceal carry permit in their county of residence and were unable to use the permit outside of Georgia.<sup>8</sup> Moreover, a person carrying a concealed weapon without having been issued a license to do so by the probate court of county of his residence may be found in violation of the licensing statute.<sup>9</sup> Ballinger sought to provide flexibility to Georgia citizens acquiring conceal carry permits across the state while establishing reciprocity with other states to ease travel restrictions for Georgia citizens with conceal carry permits.<sup>10</sup>

The Bill also directs the Georgia Attorney General to enter into formal reciprocity agreements with any state that requires a formal agreement to recognize a Georgia Weapons Carry License.<sup>11</sup> This reform recognizes that Georgia residents traveling to other states, and visitors to Georgia, should not be left defenseless simply by crossing a state line.<sup>12</sup> Six states would be added to Georgia’s list.<sup>13</sup> The motivation for the Bill was to “buttress” gun rights in the face of increasing support for gun rights regulation following mass shootings in Georgia amid the pandemic.<sup>14</sup> Georgia Carry, a state organization that says the Bill is the “no-compromise voice for Georgia gun owners.”<sup>15</sup> In fact, Rep. Ballinger has been named the best legislator by Georgia Carry twice, according to her official biography.<sup>16</sup>

The National Rifle Association also supports the Bill, citing examples of “anti-gun officials around the country [who] took the opportunity to unilaterally suspend Second Amendment rights by shutting down gun stores

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<sup>6</sup> Andy Miller, *As Legislative Session Nears End, Health Bills Await Their Fate*, WABE (Mar. 29, 2021), <https://www.wabe.org/as-legislative-session-nears-end-health-bills-await-their-fate/>. O.C.G.A. § 16-11-126.

<sup>7</sup> Patricia Murphy, *OPINION: How to Loosen Gun Laws After a Mass Shooting*, ATLANTA J. CONST. (Mar. 27, 2021), <https://www.ajc.com/politics/opinion-how-to-loosen-gun-laws-after-a-mass-shooting>.

<sup>8</sup> *Id.*

<sup>9</sup> *Asberry v. State*, 142 Ga.App. 51, 234 S.E.2d 847 (Ga. Ct. App. 1977).

<sup>10</sup> *Id.*

<sup>11</sup> *Georgia: HB 218 Passes Senate, Ask House to Concur*, NAT’L RIFLE ASS’N (Mar. 30, 2021), <https://www.nraila.org/articles/20210330/georgia-hb-218-passes-senate-ask-house-to-concur>.

<sup>12</sup> *Id.*

<sup>13</sup> Miller, *supra* note 6 (Georgia will recognize carry licenses from Alabama, Alaska, Arizona, Arkansas, Colorado, and Florida).

<sup>14</sup> Andy Miller & Rebecca Grapevine, *State May Get New Gun Rights Law, Critics Say Timing Inappropriate*, GEORGIA PUB. BROAD. (Mar. 23, 2021), <https://www.gpb.org/news/2021/03/23/state-may-get-new-gun-rights-law-critics-say-timing-inappropriate>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

and ranges” citing the pandemic as the anti-gun officials’ reason.<sup>17</sup> The gun Bill would also allow a person from one county to get a carry permit from another.<sup>18</sup>

The governor’s floor leader, Sen. Bo Hatchett (R-Cornelia), told the Rules Committee that the legislation deals with preventing a governor from taking away ammunition, other weapons like crossbows, and reloading equipment such as speedloaders or magazines, during a state of emergency.<sup>19</sup>

#### OPPOSITION’S RATIONALE

In response to increasing instances of extreme gun violence, many state legislatures have passed laws altering weapons carry rights within their respective jurisdictions and over the decades, Georgia has been no different until recently.<sup>20</sup> Opponents of House Bill 218 include Senator Michelle Au who not only opposed the gun rights expansion but sponsored her own legislation on background checks and waiting periods for gun buyers.<sup>21</sup> Her proposals did not get any traction in the Republican-dominated General Assembly.<sup>22</sup> Due to the recent mass shootings, Speaker David Ralston declined to call up House Bill 218 for a vote in a 2021 session, ultimately stalling the passage of the Bill.<sup>23</sup> In the Speaker’s most recent remarks regarding the Bill, he stated, “I’ll take any criticism that comes and we’ll deal with it. There’s always another day to talk about these things.”<sup>24</sup> Hoping to further support the Bill’s opposition democratic Representative Becky Evans stated in a debate that “law enforcement overwhelmingly opposes conceal carry reciprocity.”<sup>25</sup>

In addition to requiring Georgia to recognize other states’ concealed carry permits, the Bill also would have required local governments to hold auctions at least every 12 months to sell off weapons that had come into the

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Tyler Becker & Cot Eversole, *CRIMES AND OFFENSES: Offenses Against Public Order and Safety*, 31 Ga. St. U.L. Rev. 47 (2014).

<sup>21</sup> Miller & Grapevine, *supra* note 14.

<sup>22</sup> *Id.*

<sup>23</sup> Andy Miller, *Gun Rights Legislation Fails to Get Final Approval In The Georgia House*. GEORGIA PUB. BROAD. (Apr. 2, 2021), <https://www.gpb.org/news/2021/04/02/gun-rights-legislation-fails-get-final-approval-in-the-georgia-house>.

<sup>24</sup> *Id.*

<sup>25</sup> Patricia Murphy, *OPINION: How To Loosen Gun Laws After a Mass Shooting*, ATLANTA J. CONST. (Mar. 27, 2021), <https://www.ajc.com/politics/opinion-how-to-loosen-gun-laws-after-a-mass-shooting>

possession of authorities.<sup>26</sup> Opponents of the Bill oppose the auctions as it presents as an annual injection of new firearms into the general population of the state amidst recent mass shootings.<sup>27</sup> Senator Elena Parent expressed that “it is a very bad look for Republicans to be providing the opportunity for more guns everywhere fresh off of two mass shootings.”<sup>28</sup> In addition, it would have allowed probate courts, which handle gun-carry permits at the county level, to accept applications for them by online methods or by mail.<sup>29</sup> And the measure would bar local governments from closing or limiting the operations of shooting ranges.<sup>30</sup> These final two measures leave the Bill’s opposition uneasy because these measures expand access to the permit applications and loosen regulations and oversight on shooting ranges within the state.<sup>31</sup>

The requirement of probate courts to issue conceal carry permits even during emergencies has sparked concerns from judges such as Judge Kelli Wolk of Cobb County.<sup>32</sup> Judge Wolk expressed her concern to the Atlanta Journal Constitution when she asked “if there is a snowmageddon and nobody can get to the courthouse, am I going to get sued because nobody was here to issue [permits]?”<sup>33</sup>

The timing of any gun rights Bill’s passage – right after the deadly spa shootings – would appear at least awkward.<sup>34</sup> The Georgia Coalition for Safe Communities stated, the Bill before the Legislature is a case of “ill-timing, particularly when our state is grieving this horrendous hate crime”<sup>35</sup>

#### IMPLICATIONS IN GEORGIA

With the passage of House Bill 218, Georgians can expect to be able to apply and acquire conceal carry permits in any county in Georgia with minimal documentation.<sup>36</sup> The introduction of an online application process may bring a streamlined and cost-effective process for local governments to process permits.<sup>37</sup> In the political arena, a gun bill victory is key to several

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<sup>26</sup> Andy Miller & Rebecca Grapevine, *Georgia Gun Rights Bill: The Surprise That Didn't Happen*, CURRENT GEORGIA (Apr. 3, 2021), <https://thecurrentga.org/2021/04/03/georgia-gun-rights-bill-the-surprise-was-what-didnt-happen/>.

<sup>27</sup> *Id.*

<sup>28</sup> Murphy, *supra* note 25.

<sup>29</sup> Miller & Grapevine, *supra* note 26.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Murphy, *supra* note 25.

<sup>33</sup> *Id.*

<sup>34</sup> Miller & Grapevine, *supra* note 14.

<sup>35</sup> *Id.*

<sup>36</sup> Murphy, *supra* note 25.

<sup>37</sup> Miller & Grapevine, *supra* note 26

key state officials, including Governor Kemp and other Republicans up for reelection in 2022.<sup>38</sup>

#### LEGISLATIVE GENEALOGY

On February 1, 2021, the Bill was introduced into the House Hopper.<sup>39</sup> The Bill was read for the first time on February 2, 2021, and read for the second time on February 3, 2021.<sup>40</sup> The Bill was reported favorably by substitute in Committee on February 18, 2021, and read a third time in the House on February 25, 2021, where the Bill was also passed by substitute in the House.<sup>41</sup> On February 26, 2021, the Bill was first read and referred in the Senate.<sup>42</sup> The Bill was committed favorably by substitute by the Senate on March 15, 2021.<sup>43</sup> The Bill was read a second time in the Senate on March 16, 2021. The Bill was tabled on March 29, 2021, and subsequently taken from table and read for the third time.<sup>44</sup> On March 29, 2021, the Senate passed and adopted by substitute.<sup>45</sup> On February 3, 2022, the House agreed to the Bill and submitted to the Senate to amend or substitute as amended.<sup>46</sup> On February 24, 2022, the Senate to the House amendment.<sup>47</sup>

**Prepared by:** *Edward Hardrick*

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<sup>38</sup> *Id.*

<sup>39</sup> H.B. 218 Status Sheet.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*