

Senate Bill 214

By: Senators Harper of the 7th, Hatchett of the 50th, Albers of the 56th, Mullis of the 53rd, Robertson of the 29th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia
2 Annotated, relating to Governor's emergency powers, so as to restrict the use of emergency
3 powers on matters pertaining to firearms and other weapons; to provide for definitions; to
4 provide for a cause of action; to provide for the recovery of damages; provide for the
5 suspension of statutory speedy trial requirements when compliance with such statutory
6 speedy trial requirements becomes impracticable following a judicial emergency; to provide
7 for applicable circumstances; to amend Article 2 of Chapter 21 of Title 50 of the Official
8 Code of Georgia Annotated, relating to state tort claims, so as to waive sovereign immunity;
9 to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Part 1 of Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated,
13 relating to Governor's emergency powers, is amended by revising subsections (c) and (d) of
14 Code Section 38-3-51, relating to emergency powers of Governor, termination of emergency,
15 limitations in energy emergency, and immunity, as follows:

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16 "(c) Except as provided for in Code Section 38-3-51.1, the ~~The~~ Governor shall have and
17 may exercise for such period as the state of emergency or disaster exists or continues the
18 following additional emergency powers:

19 (1) To enforce all laws, rules, and regulations relating to emergency management and to
20 assume direct operational control of all civil forces and helpers in the state;

21 (2) To seize, take for temporary use, or condemn property for the protection of the public
22 in accordance with condemnation proceedings as provided by law;

23 (3) To sell, lend, give, or distribute all or any such property among the inhabitants of the
24 state and to account to the proper agency for any funds received for the property; and

25 (4) To perform and exercise such other functions, powers, and duties as may be deemed
26 necessary to promote and secure the safety and protection of the civilian population.

27 (d) Except as provided for in Code Section 38-3-51.1, in ~~in~~ addition to any other
28 emergency powers conferred upon the Governor by law, he may:

29 (1) Suspend any regulatory statute prescribing the procedures for conduct of state
30 business, or the orders, rules, or regulations of any state agency, if strict compliance with
31 any statute, order, rule, or regulation would in any way prevent, hinder, or delay
32 necessary action in coping with the emergency or disaster;

33 (2) Utilize all available resources of the state government and of each political
34 subdivision of the state as reasonably necessary to cope with the emergency or disaster;

35 (3) Transfer the direction, personnel, or functions of state departments and agencies or
36 units thereof for the purpose of performing or facilitating emergency services;

37 (4) Commandeer or utilize any private property if he finds this necessary to cope with
38 the emergency or disaster;

39 (4.1) Compel a health care facility to provide services or the use of its facility if such
40 services or use are reasonable and necessary for emergency response. The use of such
41 health care facility may include transferring the management and supervision of the

health care facility to the Department of Public Health for a limited or unlimited period of time not extending beyond the termination of the public health emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, or combustibles; provided, however, that for purposes of this paragraph, the terms 'explosives' and 'combustibles' shall not include firearms or ammunition or any component thereof; and

(9) Make provision for the availability and use of temporary emergency housing."

SECTION 2.

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

"38-3-51.1.

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

(1) 'Agency or political subdivision' means any department, agency, authority, commission, or government entity of this state or of any county, municipality, or other subdivision of this state.

(2) 'Public official' means an elected or appointed official or an employee or an agent of an agency or political subdivision.

(b) No agency or political subdivision shall, under any declaration of a state of emergency under this part or under any other color of law, including, but not limited to, any other

statutorily authorized responses to disaster, war, acts of terrorism, or other emergencies of whatever kind or nature:

(1) Prohibit, regulate, or curtail the otherwise lawful possession, carrying, sale, transportation, transfer, defensive use, or other lawful use of any:

(A) Firearm, including any component or accessory;

(B) Ammunition, including any component or accessory;

(C) Ammunition-reloading equipment and supplies; or

(D) Personal weapons other than firearms;

(2) Seize, commandeer, or confiscate in any manner, any:

(A) Firearm, including any component or accessory;

(B) Ammunition, including any component or accessory;

(C) Ammunition-reloading equipment and supplies; or

(D) Personal weapons other than firearms;

(3) Suspend or revoke a weapons carry license issued pursuant to Code Section 16-11-129, except as expressly authorized in that Code section;

(4) Refuse to accept an application for a weapons carry license, provided that the application has been properly completed in accordance with Code Section 16-11-129;

(5) Close or limit the operating hours of any entity engaged in the lawful selling or servicing of any firearm, including, but not limited to, any component or accessory, ammunition, ammunition-reloading equipment and supplies, or personal weapons other than firearms, unless the closing or limitation of such hours applies equally to all forms of commerce within the jurisdiction;

(6) Close or limit the operating hours of any indoor or outdoor shooting range; or

(7) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any:

(A) Firearm, including any component or accessory;

(B) Ammunition, including any component or accessory;

94 (C) Ammunition-reloading equipment and supplies; or

95 (D) Personal weapons other than firearms.

96 (c)(1) Any person adversely affected by a violation of this Code section shall have a
97 cause of action for damages, injunctive relief, or other appropriate redress in the superior
98 court in the county in which the aggrieved person resides or in which the violation
99 occurred.

100 (2) A person shall be deemed adversely affected under paragraph (1) of this subsection
101 if any of the following applies:

102 (A) The person is an individual who meets all of the following requirements:

103 (i) The individual lawfully resides within the United States;

104 (ii) The individual may legally possess a firearm under the laws of Georgia; and

105 (iii) The individual is or was subject to an act, ordinance, measure, enactment, rule,
106 or policy that is the subject of an action filed under this subsection; or

107 (B) The person is a membership organization that:

108 (i) Includes two or more individuals described in subparagraph (A) of this paragraph;
109 and

110 (ii) Is dedicated, in whole or in part, to protecting the rights of persons who possess,
111 own, or use firearms for competitive, sporting, defensive, or other lawful purposes.

112 (3) A prevailing plaintiff in an action under this subsection shall be entitled to recover
113 the following:

114 (A) The greater of the following:

115 (i) Actual damages, including consequential damages; or

116 (ii) Liquidated damages of three times the plaintiff's attorney's fees;

117 (B) Court costs, including fees; and

118 (C) Reasonable attorney's fees."

SECTION 3.

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

"50-21-38.

The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party claim brought in the courts of this state by an aggrieved person seeking a declaratory judgment, injunctive relief, actual damages, liquidated damages, or reasonable attorney fees against the state or any political subdivision thereof under subsection (c) of Code Section 38-3-51.1. This Code section shall not be construed to alter or amend any other waiver of sovereign immunity provided by law."

SECTION 4.

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