

House Bill 293

By: Representatives Byrd of the 20th, Dunahoo of the 31st, Clark of the 100th, Bonner of the 73rd, Horner of the 3rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
2 relating to dangerous instrumentalities and practices, so as to provide for protections against
3 the infringements on the right to keep and bear arms; to provide for a short title; to provide
4 for legislative findings and intent; to provide for definitions; to prohibit the enforcement or
5 assistance in the enforcement of certain federal laws or actions relative to firearms, firearm
6 accessories, and ammunition; to provide for causes of action; to provide for hearings; to
7 provide for civil penalties; to provide for attorney's fees and costs; to waive sovereign
8 immunity; to provide for applicability; to provide for related matters; to provide for an
9 effective date and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
13 dangerous instrumentalities and practices, is amended by adding a new part to read as
14 follows:

H. B. 293

15 "Part 6

16 16-11-180.

17 This Act shall be known and may be cited as the 'Second Amendment Preservation Act.'

18 16-11-181.

19 The General Assembly finds and declares that:

20 (1) The General Assembly is firmly resolved to support and defend the Constitution of
21 the United States against every aggression, whether foreign or domestic, and is duty
22 bound to oppose every infraction of those foundational principles that constitute the basis
23 of the union of the states because only a faithful observance of those principles can secure
24 the union's existence and public happiness;

25 (2) Acting through the Constitution of the United States, the people of the several states
26 created the federal government to be their agent in the exercise of a few defined powers,
27 while reserving for the state governments the power to legislate on matters concerning
28 the lives, liberties, and properties of citizens in the ordinary course of affairs;

29 (3) The limitation of the federal government's power is affirmed under the
30 10th Amendment to the Constitution of the United States, which defines the total scope
31 of federal power as being that which has been delegated by the people of the several
32 states to the federal government, and all power not delegated to the federal government
33 in the Constitution of the United States is reserved to the states respectively or to the
34 people themselves;

35 (4) If the federal government assumes powers that the people did not grant it in the
36 Constitution of the United States, its acts are unauthoritative, void, and of no force;

37 (5) The several states of the United States respect the proper role of the federal
38 government but reject the proposition that such respect requires unlimited submission.

39 If the government, created by a compact among the states, was the exclusive or final

40 judge of the extent of the powers granted to it by the states through the Constitution of
41 the United States, the federal government's discretion, and not the Constitution of the
42 United States, would necessarily become the measure of those powers. To the contrary,
43 as in all other cases of compacts among powers having no common judge, each party has
44 an equal right to judge for itself as to whether infractions of the compact have occurred,
45 as well as to determine the mode and measure of redress. Although the several states
46 have granted supremacy to laws and treaties made under the powers granted in the
47 Constitution of the United States, such supremacy does not extend to various federal
48 statutes, executive orders, administrative orders, court orders, rules, regulations, or other
49 actions which collect data or restrict or prohibit the manufacture, ownership, and use of
50 firearms, firearm accessories, or ammunition exclusively within the borders of this state;
51 such statutes, executive orders, administrative orders, court orders, rules, regulations, and
52 other actions exceed the powers granted to the federal government, except to the extent
53 that they are necessary and proper for governing and regulating the United States armed
54 forces or for organizing, arming, and disciplining militia forces actively employed in the
55 service of the United States armed forces;

56 (6) The people of the several states have given Congress the power 'to regulate
57 commerce with foreign nations, and among the several states,' but 'regulating commerce'
58 does not include the power to limit citizens' right to keep and bear arms in defense of
59 their families, neighbors, persons, or property, or to dictate what sort of arms and
60 accessories law-abiding citizens may buy, sell, exchange, or otherwise possess within the
61 borders of this state;

62 (7) The people of the several states have also granted Congress the power 'to lay and
63 collect taxes, duties, imports, and excises, to pay the debts, and provide for the common
64 defense and general welfare of the United States' and 'to make all laws which shall be
65 necessary and proper for carrying into execution the powers vested by the Constitution
66 of the United States in the government of the United States, or in any department or

67 office thereof.' These constitutional provisions merely identify the means by which the
68 federal government may execute its limited powers and shall not be construed to grant
69 unlimited power, because to do so would be to destroy the carefully constructed
70 equilibrium between the federal and state governments. Consequently, the General
71 Assembly rejects any claim that the taxing and spending powers of Congress may be used
72 to diminish in any way the right of the people to keep and bear arms;

73 (8) The General Assembly finds that the federal excise tax rate on arms and ammunition
74 in effect prior to January 1, 2023, which funds programs under the Wildlife Restoration
75 Act, does not have a chilling effect on the purchase or ownership of such arms and
76 ammunition;

77 (9) The people of this state have vested the General Assembly with the authority to
78 regulate the manufacture, possession, exchange, and use of firearms within the borders
79 of this state, subject only to the limits imposed by the Second Amendment to the
80 Constitution of the United States and Article I, Section I, Paragraph 8 of the Constitution
81 of Georgia; and

82 (10) The General Assembly strongly promotes responsible gun ownership, including
83 parental supervision of minors in the proper use, storage, and ownership of all firearms;
84 the prompt reporting of stolen firearms; and the proper enforcement of all state gun laws.
85 The General Assembly hereby condemns any unlawful transfer of firearms and the use
86 of any firearm in any criminal or unlawful activity.

87 16-11-182.

88 As used in this part, the term:

89 (1) 'Law-abiding citizen' means an individual who is not otherwise precluded under state
90 law from possessing a firearm and shall not be construed to include anyone who is not
91 legally present in the United States or the State of Georgia.

92 (2) 'Material aid' means and includes voluntarily giving or allowing others to make use
93 of lodging; communications equipment or services, including social media accounts;
94 facilities; weapons; personnel; transportation; clothing; or other physical assets. Material
95 aid shall not include giving or allowing the use of medicine or other materials necessary
96 to treat physical injuries; assistance provided to help persons escape a serious, present
97 risk of life-threatening injury.

98 16-11-183.

99 The following federal acts, laws, executive orders, administrative orders, rules, and
100 regulations shall be considered infringements on the people's right to keep and bear arms,
101 as guaranteed by the Second Amendment to the Constitution of the United States and
102 Article I, Section I, Paragraph 8 of the Constitution of Georgia, within the borders of this
103 state:

104 (1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition
105 not common to all other goods and services and that might reasonably be expected to
106 create a chilling effect on the purchase or ownership of those items by law-abiding
107 citizens;

108 (2) Any registering or tracking of firearms, firearm accessories, or ammunition;

109 (3) Any registering or tracking of the owners of firearms, firearm accessories, or
110 ammunition;

111 (4) Any act forbidding the possession, ownership, or use or transfer of a firearm, firearm
112 accessory, or ammunition by law-abiding citizens; and

113 (5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition
114 from law-abiding citizens.

115 16-11-184.

116 All federal acts, laws, executive orders, administrative orders, rules, and regulations,
117 regardless of whether enacted or issued before or after the effective date of this Act, that
118 infringe on the people's right to keep and bear arms, as guaranteed by the Second
119 Amendment to the Constitution of the United States and Article I, Section I, Paragraph 8
120 of the Constitution of Georgia, shall be invalid to this state, shall not be recognized by this
121 state, shall be specifically rejected by this state, and shall not be enforced by this state.

122 16-11-185.

123 It shall be the duty of the courts and law enforcement agencies of this state to protect the
124 rights of law-abiding citizens to keep and bear arms within the borders of this state and to
125 protect these rights from the infringements set forth under Code Section 16-11-183.

126 16-11-186.

127 No person or entity, including any public officer or employee of this state or any political
128 subdivision thereof, shall have the authority to enforce or attempt to enforce any federal
129 acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances
130 infringing on the right to keep and bear arms set forth in Code Section 16-11-183.

131 16-11-187.

132 (a) Any political subdivision or law enforcement agency that employs a law enforcement
133 officer who knowingly violates Code Section 16-11-186 or otherwise knowingly deprives
134 a citizen of this state of the rights and privileges ensured by the Second Amendment to the
135 Constitution of the United States or Article I, Section I, Paragraph 8 of the Constitution of
136 Georgia, while acting under the color of any state or federal law, shall be liable to the
137 injured party in an action at law, suit in equity, or other proper proceeding for redress and
138 subject to a civil penalty of \$50,000.00 per occurrence.

139 (b) Any person injured under this Code section shall have standing to bring an action for
140 injunctive relief in the superior court of the county where the political subdivision or law
141 enforcement agency is located. The superior court shall hold a hearing upon the motion
142 for a temporary restraining order and preliminary injunction within thirty days of service
143 of the petition.

144 (c) In any action brought pursuant to this Code section, the court may award the prevailing
145 party, other than the State of Georgia or any political subdivision thereof, reasonable
146 attorney's fees and costs.

147 (d) Sovereign, official, or qualified immunity shall not be an affirmative defense in any
148 action brought pursuant to this Code section.

149 16-11-188.

150 (a) Any political subdivision or law enforcement agency that knowingly employs an
151 individual acting or who previously acted as an official, agent, employee, or deputy of the
152 government of the United States, or otherwise acted under the color of federal law within
153 this state, who knowingly enforced or attempted to enforce any infringements identified
154 in Code Section 16-11-183 or giving material aid to the efforts of another who enforces or
155 attempts to enforce any infringements identified by Code Section 16-11-183 shall be
156 subject to a civil penalty of \$50,000.00 per employee hired by the political subdivision or
157 law enforcement agency. Any person residing in a political subdivision of this state who
158 believes that an individual has taken action that would violate the provisions of this Code
159 section shall have standing to bring an action for such civil damages.

160 (b) Any person residing or conducting business in a jurisdiction who believes that an
161 individual has taken action that would violate the provisions of this Code section shall have
162 standing to bring an action for injunctive relief in the superior court of the county where
163 the political subdivision or law enforcement agency is located.

164 (c) The court shall hold a hearing upon the motion for a temporary restraining order and
165 preliminary injunction within thirty days of service of the petition.

166 (d) In any action brought pursuant to this Code section, the court may award the prevailing
167 party, other than the State of Georgia or any political subdivision thereof, reasonable
168 attorney's fees and costs.

169 (e) Sovereign, official, or qualified immunity shall not be an affirmative defense in such
170 actions.

171 16-11-189.

172 (a) Nothing in this part shall prohibit officials of this state from accepting aid from federal
173 officials for the enforcement of the laws of this state.

174 (b) Nothing in this part shall prohibit the aid to federal officials who are in pursuit of a
175 suspect when there is a demonstrable criminal nexus with another state or country and such
176 suspect is neither a citizen of this state nor is present in this state.

177 (c) Nothing in this part shall apply to the provision of material aid for a federal prosecution
178 for any violations comparable to felony violations of Chapter 5 of this title or felony
179 violations of Chapter 13 of this title relating to Schedule I and Schedule II controlled
180 substances, provided that a weapon was used in the commission of such crime."

181 **SECTION 2.**

182 This Act shall become effective on July 1, 2023, and shall be applicable to offenses
183 committed on and after such date.

184 **SECTION 3.**

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