

House Bill 479 (AS PASSED HOUSE AND SENATE)

By: Representatives Reeves of the 34th, Hogan of the 179th, Gilliard of the 162nd, Frazier of the 126th, DeLoach of the 167th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to revise certain arrest powers; to provide for arrests by a law enforcement officer
3 outside of the jurisdiction of his or her employing law enforcement agency under certain
4 circumstances; to revise the grounds for arrest by a private person; to repeal in its entirety
5 Article 4 of Chapter 4, relating to arrest by private persons; to provide for definitions; to
6 provide for the detaining of certain persons reasonably suspected of having committed
7 certain crimes under certain circumstances; to provide for procedures; to conform a
8 reference; to amend Article 5 of Chapter 2 of Title 35 of the Official Code of Georgia
9 Annotated, relating to motor carrier compliance division, so as to provide for the powers of
10 detention by a weight inspector; to amend Chapter 38 of Title 43 of the Official Code of
11 Georgia Annotated, relating to operators of private detective businesses and private security
12 businesses, so as to repeal certain powers of detention for licensees or registrants under such
13 chapter; to amend Article 4 of Chapter 7 of Title 51 of the Official Code of Georgia
14 Annotated, relating to detention or arrest on suspicion of shoplifting or film piracy, so as to
15 provide for certain immunity from liability for certain owners and operators of retail
16 establishments and food service establishments and their agents and employees for the
17 detention of certain individuals; to provide for related matters; to provide for an effective
18 date and applicability; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **SECTION 1.**

21 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
22 amended by revising subsection (a) of Code Section 17-4-20, relating to authorization of
23 arrests with and without warrants generally, use of deadly force, adoption or promulgation
24 of conflicting regulations, policies, ordinances, and resolutions, and authority of nuclear
25 power facility security officer, as follows:

26 "(a)(1) An arrest for a crime may be made by a law enforcement officer:

27 ~~(1)~~(A) Under a warrant; or

28 ~~(2)~~(B) Without a warrant if:

29 ~~(A)~~(i) The offense is committed in such officer's presence or within such officer's
30 immediate knowledge;

31 ~~(B)~~(ii) The offender is endeavoring to escape;

32 ~~(C)~~(iii) The officer has probable cause to believe that an act of family violence, as
33 defined in Code Section 19-13-1, has been committed;

34 ~~(D)~~(iv) The officer has probable cause to believe that the offender has violated a
35 criminal family violence order, as defined in Code Section 16-5-95; provided,
36 however, that such officer shall not have any prior or current familial relationship
37 with the alleged victim or the offender;

38 ~~(E)~~(v) The officer has probable cause to believe that an offense involving physical
39 abuse has been committed against a vulnerable adult, who shall be for the purposes
40 of this subsection a person 18 years old or older who is unable to protect himself or
41 herself from physical or mental abuse because of a physical or mental impairment; or

42 ~~(F)~~(vi) For other cause there is likely to be failure of justice for want of a judicial
43 officer to issue a warrant.

44 (2) Except where otherwise provided by law with respect to a law enforcement officer's
45 jurisdictional duties and limitations, a law enforcement officer may make an arrest for an
46 offense outside of the jurisdiction of the law enforcement agency by which he or she is
47 employed without a warrant:

48 (A) If the offense is committed in such officer's presence or within such officer's
49 immediate knowledge;

50 (B) When in immediate pursuit of an offender for an offense committed within the
51 jurisdiction of the law enforcement agency that employs such law enforcement
52 officer; or

53 (C) While aiding or assisting another law enforcement officer in the jurisdiction of
54 the law enforcement agency employing such other law enforcement officer.

55 (3) Nothing in paragraph (2) of this subsection shall be construed as limiting sheriffs or
56 deputy sheriffs in the performance of the duties and responsibilities imposed on them by
57 the Constitution and laws of this state."

58 **SECTION 2.**

59 Said title is further amended by repealing in its entirety Article 4 of Chapter 4, relating to
60 arrest by private persons, and designating it as reserved.

61 **SECTION 3.**

62 Said title is further amended in Chapter 4, relating to arrest of persons, by adding a new
63 article to read as follows:

64 "ARTICLE 5

65 17-4-80.

66 (a) As used in this article, the terms:

67 (1) 'Food service establishment' shall have the same meaning as provided in Code
68 Section 26-2-370.

69 (2) 'Law enforcement unit' shall have the same meaning as provided in Code
70 Section 35-8-2.

71 (3) 'Owner' means any person or his or her agent or employee who owns or operates a
72 retail establishment or a food service establishment or any business owning personal
73 property located on their own property or on the property of others on which they are
74 conducting their business activities.

75 (4) 'Retail establishment' shall have the same meaning as provided in Code
76 Section 16-7-2.

77 (b) A private person may detain an individual if such private person is:

78 (1) An owner of a retail establishment who has reasonable grounds to believe that the
79 individual sought to be detained has committed or attempted to commit the offense of
80 theft by shoplifting as set forth in Code Section 16-8-14, refund fraud as set forth in Code
81 Section 16-8-14.1, or theft by unlawful use of retail sales receipts or Universal Product
82 Code labels as set forth in Code Section 16-8-17;

83 (2) An owner of a food service establishment who has reasonable grounds to believe that
84 the individual sought to be detained has committed or attempted to commit theft by
85 taking as set forth in Code Section 16-8-2 or theft of services as set forth in Code Section
86 16-8-5;

87 (3) An owner of any business entity operating on their own property or on the property
88 of others on which they are doing business who have reasonable grounds to believe that
89 the individual sought to be detained has committed or attempted to commit theft by
90 taking as set forth in Code Section 16-8-2 or theft of services as set forth in Code Section
91 16-8-5;

92 (4) A weight inspector under Article 5 of Chapter 2 of Title 35 when needed for purposes
93 of performing his or her duties under such article; or

94 (5) A licensee or registrant under Chapter 38 of Title 43 when needed in the performance
95 of his or her business conducted in conformance with such chapter.

96 (c) A private person who detains an individual under this Code section shall either release
97 said individual or, within a reasonable time, contact the law enforcement unit with
98 appropriate jurisdiction. An individual detained by a private person under this Code
99 section who is not released shall be surrendered to a law enforcement officer together with
100 any personal belongings removed from such individual.

101 (d)(1) Nothing in this subsection shall be construed as limiting or altering any immunity
102 or defense under Article 2 of Chapter 3 of Title 16.

103 (2) Except in circumstances involving use of force in defense of self or others, involving
104 use of force in defense of a habitation, or involving use of force to prevent the
105 commission of a forcible felony, a person acting pursuant to this Code section shall not
106 use force which is intended or likely to cause great bodily harm or death, but may use
107 reasonable force to the extent that he or she reasonably believes is necessary to detain an
108 individual."

109 **SECTION 4.**

110 Said title is further amended by revising paragraph (1) of subsection (c) of Code
111 Section 17-6-1, relating to where offenses bailable, procedure, schedule of bails, and appeal
112 bonds, as follows:

113 "(c)(1) In the event a person is detained in a facility other than a municipal jail for an
114 offense which is bailable only before a judge of the superior court, as provided in
115 subsection (a) of this Code section, and a hearing is held pursuant to Code Section
116 17-4-26 or ~~17-4-62~~, the presiding judicial officer shall notify the superior court in writing
117 within 48 hours that the arrested person is being held without bail. If the detained person
118 has not already petitioned for bail as provided in subsection (d) of this Code section, the

119 superior court shall notify the district attorney and shall set a date for a hearing on the
120 issue of bail within 30 days after receipt of such notice."

121 **SECTION 5.**

122 Article 5 of Chapter 2 of Title 35 of the Official Code of Georgia Annotated, relating to
123 motor carrier compliance division, is amended by revising subsection (d) of Code
124 Section 35-2-102, relating to weight inspector positions, training, powers and responsibilities,
125 and limits on responsibilities, as follows:

126 "(d) ~~A weight inspector is not a peace officer and shall not be authorized to carry a firearm~~
127 ~~or exercise any power of arrest other than a citizen's arrest in accordance with Code~~
128 ~~Sections 17-4-60 and 17-4-61.~~ At all times while a weight inspector is on duty, there shall
129 be a supervisor over the weight inspector also on duty who shall be a certified peace
130 officer."

131 **SECTION 6.**

132 Chapter 38 of Title 43 of the Official Code of Georgia Annotated, relating to operators of
133 private detective businesses and private security businesses, is amended by repealing Code
134 Section 43-38-13, relating to arrest powers of licensees and registrants, in its entirety and
135 designating such Code section as reserved.

136 **SECTION 7.**

137 Article 4 of Chapter 7 of Title 51 of the Official Code of Georgia Annotated, relating to
138 detention or arrest on suspicion of shoplifting or film piracy, is amended by revising Code
139 Section 51-7-60, relating to preclusion of recovery for detention or arrest of person suspected
140 of shoplifting under certain circumstances, as follows:

141 "51-7-60.

142 Whenever the owner or operator of a ~~mercantile~~ retail establishment as defined in Code
 143 Section 16-7-2 or a food service establishment as defined in Code Section 26-2-370 or any
 144 agent or employee of the owner or operator thereof detains, ~~arrests,~~ or causes to be detained
 145 ~~or arrested~~ any person reasonably thought to be engaged in shoplifting or refund fraud and,
 146 ~~as a result of the detention or arrest,~~ pursuant to Code Section 17-4-80 and any person who
 147 detains or causes to be detained a person while acting pursuant to Article 2 of Chapter 3
 148 of Title 16 wherein the person so detained ~~or arrested~~ brings an action for false arrest or
 149 false imprisonment against ~~the~~ such owner, operator, agent, ~~or~~ employee, or person, no
 150 recovery shall be had by the plaintiff in such action ~~where~~ when it is established by
 151 competent evidence:

152 (1) That the plaintiff had so conducted himself or herself or behaved in such manner as
 153 to cause a person of reasonable prudence to believe that the plaintiff, at or immediately
 154 prior to the time of the detention ~~or arrest,~~ was committing an:

155 (A) Offense ~~the offense of shoplifting, as defined by Code Section 16-8-14, or refund~~
 156 ~~fraud as defined in Code Section 16-8-14, or~~ authorized for detention pursuant to Code
 157 Section 17-4-80; or

158 (B) Act which caused a detention which was justified as provided in Article 2 of
 159 Chapter 3 of Title 16; and

160 (2) That the manner of the detention ~~or arrest~~ and the length of time during which such
 161 plaintiff was detained was under all the circumstances reasonable."

162 **SECTION 8.**

163 This Act shall become effective upon its approval by the Governor or upon its becoming law
 164 without such approval. This Act shall not apply to rights and duties that matured, penalties
 165 that were incurred, or proceedings that were begun before the effective date of this Act.

166

SECTION 9.

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