

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

|                           |   |                  |
|---------------------------|---|------------------|
| GEORGIACARRY.ORG, INC.,   | ) | Civil Action No. |
| Plaintiff;                | ) | 2015 CV 256659   |
|                           | ) |                  |
| v.                        | ) |                  |
|                           | ) |                  |
| CODE REVISION COMMISSION, | ) |                  |
| <i>et al.</i>             | ) |                  |
| Defendants.               | ) |                  |

**LEGISLATIVE BRANCH DEFENDANTS' MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS,  
AND BRIEF IN SUPPORT**

Defendants Code Revision Commission; David Ralston, Speaker of the Georgia House of Representatives; Lowell "Casey" Cagle, President of the Georgia Senate; and John Does 1 through 13 (hereinafter collectively "Legislative Branch Defendants")<sup>1</sup> respectfully move this court to: (1) dismiss the Complaint brought by Plaintiff GeorgiaCarry.Org., with prejudice, for failure to state a claim for which relief can be granted; or, in the alternative, (2) grant judgment on the pleadings in favor of Legislative Branch Defendants. Arguments in support are presented below.

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<sup>1</sup> To the knowledge of undersigned counsel, John Does 1 through 13 have not been identified or served with a copy of the Complaint or summons, nor have they waived service. Accordingly, they should be dismissed from this action. Since undersigned counsel represent the Code Revision Commission, out of an abundance of caution they are filing this motion and brief on behalf of John Does 1 through 13 to the extent they are members of such Commission, but are doing so without waiving the rights of service of process on behalf of John Does 1 through 13, which are hereby expressly reserved.

## I. STATEMENT OF THE CASE

This action concerns the provisions of certain weapons-related legislation, particularly including provisions relating to carrying weapons in school safety zones, enacted at the 2014 regular session of the General Assembly of Georgia, as published by the Code Revision Commission ("Commission") in the 2014 volumes of and supplements to the Official Code of Georgia Annotated.

Specifically, both HB 826<sup>2</sup> and HB 60<sup>3</sup> from the 2014 regular session of the General Assembly amended various provisions of the Official Code of Georgia Annotated relating to weapons, including but not limited to Code Section 16-11-127.1 regarding the carrying of weapons in school safety zones, *inter alia*. As commanded by law, the Code Revision Commission compared the two Acts in question and determined that certain portions of those Acts conflicted.<sup>4</sup> In particular, provisions in the earlier Act (HB 826) authorizing the carrying of particular weapons in a defined area in and around schools were determined to be conflicting with and having been superseded by provisions of the later Act (HB 60) which authorized the carrying of only firearms in a differently defined area in and around schools.<sup>5</sup> To the extent of such conflict, the later Act (HB 60) controlled and was given

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<sup>2</sup> Act Number 575, Ga. L. 2014, p. 432.

<sup>3</sup> Act Number 604, Ga. L. 2014, p. 599.

<sup>4</sup> See Argument 3 of Section II(B) of this brief, *infra*, for detailed discussion of the procedure for conflict determination and resolution.

<sup>5</sup> The latest enactment is determined by the order in which bills became Acts with or without the approval of the Governor. O.C.G.A. § 28-9-5(b). HB 826 was approved by the

effect for purposes of publishing the 2014 updates to the Code, pursuant to subsection (b) of Code Section 28-9-5.

Plaintiff GeorgiaCarry.Org subsequently filed this action against Legislative Branch Defendants, seeking a writ of mandamus compelling the Code Revision Commission to incorporate all provisions of HB 826 into the Official Code of Georgia Annotated, particularly "as they pertain to weapons and school safety zones, including the provision decriminalizing carrying firearms in school safety zones by GWL [Georgia weapons carry license] holders." (Complaint ¶¶ 26, 29, & 33.) The Complaint also seeks declaratory judgment relief against Governor Nathan Deal. (Complaint ¶¶ 30-32 & 34.)<sup>6</sup>

## II. ARGUMENT AND CITATION OF AUTHORITY

### A. Standard for grant of Legislative Branch Defendants' motion(s).

A motion to dismiss for failure to state a claim should be granted where it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his or her claim. Voyles v. McKinney, 283 Ga. 169, 170 (2008) (citing Bourn v. Herring, 225 Ga. 67, 70 (1969)).

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Governor on April 22, 2014. Ga. L. 2014, p. 432. HB 60 was approved by the Governor on April 23, 2014. Ga. L. 2014, p. 599.

<sup>6</sup> Legislative Branch Defendants do not herein respond to Plaintiff's claims for declaratory judgment relief because such claims are directed against Defendant Governor Nathan Deal, on whose behalf the Office of the Attorney General has filed a separate Motion to Dismiss.

"Where the party moving for judgment on the pleadings does not introduce affidavits, depositions, or interrogatories in support of his motion, such motion is the equivalent of a motion to dismiss the complaint for failure to state a claim upon which relief can be granted." Cox v. Turner, 268 Ga. App. 305 (2004) (quoting State Soil & Water Conservation Comm'n v. Stricklett, 252 Ga. App. 430, 436-437 (2001)).

**B. Plaintiff is not entitled to a writ of mandamus under any state of facts which could be proved in support of its claim.** Mandamus is a remedy for official inaction. Coastal Serv., Inc., v. Jackson, 223 Ga. 238, 239 (1967). The right to the extraordinary aid of mandamus exists only where the applicant has a clear legal right to the relief sought, there has been a gross abuse of discretion, and there is no other adequate remedy. Voyles, supra, at 169-170. For any one or more of the reasons stated below, Plaintiff has no legal right to the relief sought by means of writ of mandamus against Legislative Branch Defendants in this case. Furthermore, an adequate remedy exists through the political, legislative process for Plaintiff to lobby the General Assembly to amend the current Code by means of further legislation.

**1. Plaintiff's petition for a writ of mandamus against Legislative Branch Defendants is moot.**

The statutory text of the content of the Official Code of Georgia Annotated as published in the 2014 volumes of and supplements to the Official Code of Georgia Annotated was reenacted in 2015 by the General Assembly, HB 90, Section 54(a), via legislation which the

Code Revision Commission is required by law to prepare and have introduced at each regular session of the General Assembly, O.C.G.A. § 28-9-5(c). Such reenactment adopted the updated Code text as published by the Commission in 2014 and gave it full force and effect of law. O.C.G.A. § 28-9-5(c). Thus, that content is now conclusively the work of the General Assembly. Even if one were to assume for the sake of argument that the content of the Code as published by the Commission in 2014 was somehow "inaccurate" as claimed by Plaintiff, any such "defect" has been cured as a matter of law. Thus, Plaintiff's claim against Legislative Branch Defendants is moot.

The plenary authority and responsibility for publication of the Official Code of Georgia Annotated and annual updates thereto is conferred by law upon the Code Revision Commission, O.C.G.A. §§ 28-9-3 & 28-9-5, the work of which is within the sphere of legislative authority, see Harrison v. Code Revision Comm'n, 244 Ga. 325, 330 (1979). Among other things, the Commission is expressly granted the authority:

- (2) To formulate with the publisher all the details associated with the codification or recodification of the Code and laws of Georgia;
- (3) To take such action as is necessary to effectuate Code revision; ...
- (12) To review, approve, or disapprove the work of the publisher in preparing, supplementing, indexing, or revising the Code or any volume, pocket part, or portion thereof; ... [and]

(19) To take such other action or exercise such additional powers as may be necessary or convenient to carry out the purposes of this chapter, the duties and powers of the commission, or any contract entered into under [Chapter 9 of Title 28] ....

O.C.G.A. § 28-9-3 (2), (3), (12), & (19).

In any case where Acts of the same session amend the same provision of the Official Code of Georgia Annotated, for purposes of publishing the updated Code the Commission must make a determination as to whether and how to incorporate such amendments into the annually published official updates. O.C.G.A. § 28-9-5(b). In 2014, the Commission made such a determination as to the amendments made by HB 826 and HB 60 and published the updated text of the Code accordingly. See, e.g., O.C.G.A. § 16-11-127.1 as published at pages 139-143 of the 2014 Supplement to Volume 14A of the Official Code of Georgia Annotated, along with the official "2014 amendments" note and 2014 "Code Commission notes" as published at page 144 of that same supplement. The Code Revision Commission notes detail the Commission's action in regard to that particular Code section as follows:

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2014, the amendment of this Code section by Ga. L. 2014, p. 432, § 1-1/HB826, was treated as impliedly repealed and superseded by Ga. L. 2014, p. 599, § 1-6/HB 60, due to irreconcilable conflict.

Importantly, at the next regular session of the General Assembly, the legislature statutorily adopted the text of the Code sections of the Official Code of Georgia Annotated

as published in the 2014 annual updates. HB 90, approved by the Governor on March 13, 2015,<sup>7</sup> provides in subsection (a) of Section 54 as follows:

(a) Except for Title 47, *the text of Code sections* and title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, division, and subdivision numbers and designations *as contained in the Official Code of Georgia Annotated published under authority of the state by The Michie Company in 1982 and contained in Volumes 3 through 40 of such publication or replacement volumes thereto, as amended by the text and numbering of Code sections as contained in the 2014 supplements to the Official Code of Georgia Annotated published under authority of the state in 2014 by LEXIS Publishing, are hereby reenacted.*

(Emphasis added.)<sup>8</sup>

The effect of such reenactment of the Code is specified in what is now subsection (c) of Code Section 28-9-5 of the O.C.G.A., which provides in pertinent part as follows:

(c) ... [R]eenactment of the Official Code of Georgia Annotated shall have the effect of adopting and giving force and effect of law to all the statutory text and numbering

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<sup>7</sup> Since the 2015 edition of the official Georgia Laws volumes have yet to be published, a certified copy of Act No. 9, HB 90, which became effective March 13, 2015, is attached to this brief for the court's convenient reference to that statute. A certified copy of that Act is also attached to Defendant Governor Nathan Deal's Answer and Defenses of Law as Exhibit 1 thereof. The AP version of HB 90 is also available through the Georgia General Assembly's official website: <http://www.legis.ga.gov/Legislation/20152016/150690.pdf>

<sup>8</sup> The title of Act No. 9, HB 90, stated its purposes, including "to revise, modernize, correct errors or omissions in, and reenact the statutory portion of said Code, as amended, in furtherance of the work of the Code Revision Commission; ... [and] to provide for other matters relating to revision, reenactment, and publication of said Code ...."

as contained in such volumes, pocket parts, and supplements, including but not limited to provisions as published therein in accordance with subsections (a) and (b) of this Code section.

See also Lumpkin v. Patterson, 170 Ga. 94, 113 (1930) (whether Code sections are taken from statutes of the state or otherwise, when they are incorporated in a code adopted by the legislature of this State, they have the effect of statute law); Central of Ga. Ry. v. State, 104 Ga. 831 (1898) (adoption of a code by the General Assembly, which was prepared for the legislature by a commission, has the effect of curing any alleged defects in the contents of a particular section as set forth in that code).

In Central of Ga., supra, the plaintiff had alleged that certain provisions of an official Code prepared by three Code commissioners, who were appointed pursuant to law to codify the laws of this State, were in error and did not reflect the law of the State because they included new matter that had never before been law. On appeal, the Georgia Supreme Court held otherwise, because the General Assembly had subsequently statutorily adopted the Code prepared by the Code commissioners.

The Court first examined the plaintiff's contention and the role of the code commissioners:

It is insisted [by plaintiff] that by the act ... providing for the appointment of ... commissioners to codify the laws of Georgia, these commissioners were simply empowered to codify and arrange in systematic and condensed form the laws then in force in the State, and had no authority whatever to embody in the Code any new law



or any provision which modified any existing law of the State. .... *If the codifiers introduced any new matter in the Code, it of course amounted to nothing unless it afterwards was enacted into statute by legislative sanction. Where such matter is not inherently unconstitutional, that is, where it embraces nothing that is not a proper subject-matter of legislative enactment, there can be no question that the legislature has the power to enact it into law or not, as it sees proper. When the work of the commissioners was completed, it was laid before the legislature. It had the power to reject that work or to accept it ....*

Central of Ga., *supra*, at 837-838 (emphasis added).

The Court then turned to the vital question--*i.e.*, the effect of the legislature's adoption of the work of the code commissioners:

*The vital question, then, in this case is, not what the commissioners had the power to do, but what the legislature intended to do with their work. That intention can only be gathered from what the legislature itself declared when it finally passed upon the work reported to it by the commissioners. This final action of the legislature is embodied in what is known as the "adopting act" of the Code.... [T]hat act declares, "That the Code of laws prepared under its authority [by the Code Commissioners]..., and recommended and reported for adoption, and with the acts passed by the General Assembly ... added thereto by the codifiers, be, and the same is, hereby adopted and made of force as the Code of Georgia." ... The Code of laws designated and identified in the act was adopted and made of force as the Code of Georgia; not*

*[merely] a part of the Code was then made of force, but the entire Code as compiled by the commissioners. It would be difficult to conceive how language could more clearly or forcibly express the real intent of the legislature in this matter than the words used in the title and body of this act. If it means anything, it means a purpose of the legislature to adopt and make of force a code of laws, and hence to breathe into every provision in that Code the vitality of a legislative enactment. Any other construction would ascribe to the legislature the folly of declaring, in effect, we adopt as law in this code everything which would be law anyway without further sanction.... When, however, the Code ... was reported by the commissioners, and was examined, approved, and favorably reported by a joint committee of both houses of the legislature, that body went a step further and passed the "adopting act" ....*

Id. at 838-840 (emphasis added).

The Court then summarized and applied its principle:

*... Whenever the legislature, therefore, employs such words as "adopting a code [cf. O.C.G.A. § 28-9-5(c)]," no other legitimate or reasonable construction can be given the language itself than an intention to enact and make of force as a statute every provision in the entire work which it has under consideration....*

Id. at 842.

*... [I]f the act involved in this case ... was never law before it was incorporated in the Code ..., then it is entirely new matter in the Code, purposely put there, and does not get there by inadvertence or mistake. It has always been held that where new*

matter is embraced in the Code, it becomes the law of the State the moment the Code goes into effect.

*... What changes have occurred in the ... Code ... have ... been thus adopted, and they should receive at the hands of the judiciary the same respect and consideration as any other act of the legislative department of the State.*

Id. at 854-855 (emphasis added); see also Threlkeld v. Whitehead, 95 Ga. App. 378, 383-384 (1957) (omission of provision of prior law in subsequently adopted Code effected such a material and drastic change in the law that it was improbable that the General Assembly, in adopting the Code, did not intentionally make the change). The General Assembly has codified the principle of law enunciated in Central of Ga., supra. See O.C.G.A § 28-9-5(c).<sup>9</sup>

In the present case, the Code Revision Commission, as provided by statute in Code Sections 28-9-3 and 28-9-5, published the annual updated version of the Official Code of Georgia Annotated in 2014. As further commanded by statute in subsection (c) of Code

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<sup>9</sup> The amendment to subsection (c) of Code Section 28-9-5 regarding the effect of reenactment of the Official Code of Georgia Annotated, Ga. L. 2014, p. 866, Sec. 28, par. (3)(D), and effectively codifying the principle of law from Central of Ga., supra, was made by the General Assembly in 2014 in immediate response to--*and in rejection of*--footnote 3 of the majority opinion of the Georgia Supreme Court in Rutter v. Rutter, 294 Ga. 1 (2013), wherein the Court summarily stated that, in a case concerning the construction of multiple amendments to a Code section and publication of the resultant contents of that Code section as determined by the Commission played no role in determining the validity of the Code section as published. In light of such 2014 amendment, footnote 3 of the Rutter majority opinion has been rejected by the General Assembly, and the principle of Central of Ga. has been codified. See State v. Davis, 246 Ga. 761, 761-762 (1980) (citing Buice v. Dixon, 223 Ga. 645, 647 (1967)) (statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law, and their meaning and effect will be determined with reference to other statutes and the decisions of the courts).

Section 28-9-5, the Commission subsequently prepared an annual reviser bill for 2015 (HB 90) which provided for reenactment of the version of the Code so published in 2014. As in Central of Ga., supra, at 838, "[w]hen the work of the commissioners was completed, it was laid before the legislature. [The legislature] had the power to reject that work or to accept it..." That 2015 revision and reenactment bill (HB 90) was introduced in the General Assembly, was enacted, and became effective upon its approval by the Governor on March 13, 2015, as Act No. 9 of the 2015 regular session of the legislature. According to law, that reenactment had "the effect of adopting and giving force and effect of law to all the statutory text and numbering as contained in such volumes, pocket parts, and supplements," including the provisions previously construed in 2014 by the Code Revision Commission. O.C.G.A. § 28-9-5(c). That adoption had the effect of curing any alleged "defect" in the Code as published. See Central of Ga., supra.

If the General Assembly wished to change any portion of the Code as published by the Commission in 2014 (including but not limited to Code Section 16-11-127.1), it was free to legislatively do so at the 2015 regular session. Cf. Sections 1 through 53 of Act No. 9, HB 90 (correcting and updating provisions in Titles 1 through 53 of the O.C.G.A.).<sup>10</sup> In particular, as to Code Section 16-11-127.1, Section 16 of Act No. 9, HB 90, made only a grammatical correction by the addition of a comma, and did nothing more; if the legal

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<sup>10</sup> Additionally, there was the option of convening an extraordinary session of the General Assembly between the 2014 and 2015 regular sessions for the purpose "correcting" any portion of the Code as published in 2014, if either the Governor or the General Assembly had seen fit to so do. Ga. Const. art. V, sec. II, par. VII. They did not.

presumption of the General Assembly's knowledge of the existing condition of the law was not enough, this correction shows that the General Assembly was indeed fully cognizant of the content of that Code section as published in 2014 and chose not to make any other changes.

The content of the Code as adopted is not the work of the Code Revision Commission; rather, the Code as adopted is conclusively the work of the General Assembly, for the adoption of a Code is a legislative Act. See Central of Ga., supra. Any issue of whether language from HB 826 was properly omitted from the Code as published in 2014 has been settled conclusively by the General Assembly, as a matter of statutory law, in favor of the Commission's published work. If Plaintiff wishes to have the content of the Code changed, an adequate remedy exists through the political, legislative process by lobbying the General Assembly to amend the current Code through legislation. Plaintiff's petition for writ of mandamus against Legislative Branch Defendants is moot and should be dismissed.

**2. Mandamus is not available to control or change the action of public officials when the power to make the determination complained of is conferred upon them by law.**

"Mandamus is ordinarily considered as a remedy for official inaction.... Mandamus is not the proper remedy to compel 'the undoing of acts already done ....'" Wilson v. Sanders, 222 Ga. 681, 685 (1966) (citations omitted). When the law vests public officials with the power to make a determination -- that is, the power "to adjudge, to come to a decision, to decide upon after investigation" -- then a writ of mandamus to control or change a

determination made by those officials is improper. Id. at 684-685 (quoting Smith v. Bd. of Education, 174 Ga. 735, 739 (1932)). In Wilson, the petitioner sought a writ of mandamus against various state officials (including the Governor, Secretary of State, and Attorney General) to order those officials to change a determination they had made previously as to how and in what manner a proposed amendment to the Constitution shall be submitted to the voters. The Georgia Supreme Court, noting that constitutional law vested such officials with the power to make such a determination, held that the plaintiff was not entitled to a writ ordering the officials to change their determination. Wilson at 684-685.

As discussed above, the plenary authority and responsibility for publication of the Official Code of Georgia Annotated and annual updates thereto is conferred by law upon the Code Revision Commission. O.C.G.A. §§ 28-9-3 & 28-9-5. Instances of multiple amendments enacted at the same session of the General Assembly require a determination by the Commission as to whether those amendments (1) can be construed together or (2) conflict. Id. § 28-9-5(b). The Code Revision Commission is not commanded in all cases to publish every word of every Act of the General Assembly which purports to amend the Code. Rather, in the case of Acts *in pari materia* which were enacted at the same session of the General Assembly, the commission is commanded by law not to publish portions of statutes which--*in the determination of the Commission*--are in conflict with later-enacted statutes. Id. § 28-9-5(b). By its very nature, construing multiple Acts together requires an exercise in professional judgment. (Note that certain members of the Code Revision Commission and its staff are required to be attorneys at law. See id. §§ 28-9-2, 28-9-4, & 28-4-3.)

Plaintiff's petition for a writ of mandamus in this case acknowledges that the 2014 updates to the Official Code of Georgia Annotated were published by the Commission. (Complaint ¶ 25.) Whether or not Plaintiff agrees with the Commission's determination as to the contents of that publication is irrelevant insofar as the remedy of mandamus is concerned. Here, as in Wilson, *supra*, "[i]n effect, the petition seeks a review of a determination by the defendant officials and seeks to compel by the writ of mandamus the making of a new or different determination. This is not the proper function of a writ of mandamus." Wilson, at 685. For the court to decide otherwise in this case and issue the writ of mandamus sought by Plaintiff would be to substitute the court's judgment for the determination of the Code Revision Commission and usurp the powers of the legislative branch of state government. See Atlanta v. Wright, 119 Ga. 207, 211-212 (1903).

**3. Even if one assumes *arguendo* that the action required of the Code Revision Commission was ministerial, requiring no exercise of professional judgment, the outcome was correct.**

Legislative Branch Defendants contend strongly that the action of the Code Revision Commission complained of here is discretionary. However, even if one assumes, for the sake of argument only, that the action required of the Code Revision Commission was ministerial, requiring no exercise of professional judgment, the outcome was correct.

In determining if any bills are conflicting, the Code Revision Commission is charged with conducting an analysis which is required to be informed and carried out in strict accord with the procedures established by statute, which provides in pertinent part:

(b) For purposes of publishing volumes, replacement volumes, and supplements to the Official Code of Georgia Annotated pursuant to this chapter: legislation enacted at the same session of the General Assembly and amending the same statutory provision *shall be considered in pari materia, and full effect shall be given to each if that is possible*; Acts enacted during the same session shall be treated as conflicting with each other *only to the extent that they cannot be given effect simultaneously*; in the event of such a conflict, the latest enactment, as determined by the order in which bills became law with or without the approval of the Governor, shall control to the extent of the conflict ...

O.C.G.A. § 28-9-5(b) (emphasis added).

HB 60 and HB 826, both enacted in 2014 by the General Assembly, amended eight of the same Code sections. Of these eight, the amendments to six of the Code sections were considered nonconflicting and the changes made by both HB 60 and HB 826 were incorporated.<sup>11</sup> The amendments to the two remaining Code sections were considered conflicting; and, therefore, only the changes made by HB 60 (the last signed by the Governor) were given effect.<sup>12</sup>

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<sup>11</sup> O.C.G.A. §§ 16-5-21, 16-5-24, 16-11-127, 16-12-1, 20-2-1180, & 20-2-1185.

<sup>12</sup> O.C.G.A. §§ 16-11-127.1 & 16-11-137.



The statute that is the subject of Plaintiff's Complaint, Code Section 16-11-127.1, was amended by both HB 60 and HB 826 in a manner that resulted in multiple conflicting provisions. The primary purpose of Code Section 16-11-127.1 is to criminalize the possession of certain defined weapons in and around schools. To this end, it is critical to every citizen to clearly know what weapons are prohibited and where they are prohibited. The heart of Code Section 16-11-127.1 is paragraph (b)(1). This paragraph establishes the crime of possessing a particular weapon in a school safety zone. The remainder of the Code section includes definitions, penalties, exceptions, statutory construction, admissible evidence, and related matters.

At the outset, the definitions contained in subsection (a) of Code Section 16-11-127.1 as contained in each bill and which are utilized in paragraph (b)(1) present immediate substantial differences. Particularly problematic is the definition of "school safety zone". HB 60 revised the definition to read as follows:

(3) 'School safety zone' means in or on any real property or building owned by or leased to:

- (A) Any public or private *elementary school, secondary school, or local board of education* and used for elementary or secondary education; and
- (B) Any public or private *technical school, vocational school, college, university, or other institution of postsecondary education.*

(Emphasis added).<sup>13</sup> In contrast, HB 826 revised the term to mean:

(8) 'School safety zone' means in or on any real property or building owned by or leased to any *school or postsecondary institution*.

(Emphasis added).<sup>14</sup> To compare the applicability of the two definitions, the term "school" in HB 826 has to be inserted. Under HB 826, "school" is defined as "a public or private educational program or institution instructing children at any level, *pre-kindergarten* through twelfth grade."<sup>15</sup> In applying the definition of the term "school" and in comparing the two definitions, the universe of locations in which (b)(1) would apply is clearly different.

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<sup>13</sup> Lines 231-237 of HB 60 (HB 60/AP). In contrast with the Enrolled version of HB 60 published in the 2014 Georgia Laws volume, the "AP" ("As Passed") version of HB 60 retains line numbers along with the striking and underscoring which indicates where existing statutory text was deleted (stricken) by the bill and where new statutory text was added (underscored) by the bill, thus making it easier to identify the changes. The AP version of HB 60 is available for comparison through the Georgia General Assembly's official website: <http://www.legis.ga.gov/Legislation/20132014/144825.pdf>

<sup>14</sup> Lines 44-48 of HB 826 (LC 29 5943S/AP). In contrast with the Enrolled version HB 826 published in the 2014 Georgia Laws volume, the "AP" ("As Passed") version of HB 826 retains line numbers along with the striking and underscoring which indicates where existing statutory text was deleted (stricken) by the bill and where new statutory text was added (underscored) by the bill, thus making it easier to identify the changes. The AP version of HB 826 is available for comparison through the Georgia General Assembly's official website: <http://www.legis.ga.gov/Legislation/20132014/144999.pdf>

<sup>15</sup> Lines 42-43 of HB 826 (LC 29 5943S/AP).

Another critical difference in the definitions is the use of "weapon" as compared to "firearm". HB 826 narrowed the scope of the criminal act to include only firearms, defined as:<sup>16</sup>

... a handgun, rifle, shotgun, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.

HB 60 continued the use of a much broader definition of "weapon" to include:<sup>17</sup>

...any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, knuckles, whether made from metal, thermoplastic, wood, or other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106....

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<sup>16</sup> Lines 37-38 of HB 826 (LC 29 5943S/AP).

<sup>17</sup> Lines 238-249 of HB 60 (HB 60/AP).

The disparate definitions in the two bills results in striking differences in what would be considered criminal behavior. HB 826 criminalizes firearms in and around buildings for elementary, secondary, and postsecondary education.<sup>18</sup> HB 60 criminalizes the possession of firearms *and other weapons* in and around buildings for *pre-kindergarten*, elementary, secondary, and postsecondary education.<sup>19</sup> These two results -- criminalizing and decriminalizing different actions -- cannot be reconciled.

Similarly, the competing amendments to paragraphs (c)(6), (c)(7), and (c)(8),<sup>20</sup> relating to exceptions to the crime, are also fraught with uncertainty as to their application. These three exceptions relate to persons authorized in writing by the school to possess weapons on school property, persons with weapons carry licenses, and persons with weapons in locked compartments in vehicles, respectively. Because paragraph (c)(7) of Code Section 16-11-127.1 specifically references a weapons carry license obtained pursuant to Code Section 16-11-129, it is assumed by Legislative Branch Defendants that this is the primary provision in which Plaintiff is requesting relief. Therefore, although the same analysis applies to paragraphs (c)(6), (c)(7), and (c)(8), for purposes of illustration, paragraph (c)(7) is considered herein. Under HB 60, the exception under paragraph (c)(7) for persons with weapons carry licenses applies.<sup>21</sup>

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<sup>18</sup> See lines 37-38 and 44-48 of HB 826 (LC 29 5943S/AP).

<sup>19</sup> See lines 231-237 and 238-249 of HB 60 (HB 60/AP).

<sup>20</sup> Note that HB 826 redesignated these paragraphs as (c)(5), (c)(6), and (c)(7), respectively.

<sup>21</sup> See lines 291-292 of HB 60 (HB 60/AP).

...when such person *carries or picks up a student* within a school safety zone, at a school function, or on a bus or other transportation furnished by a school...

(Emphasis added.) In contrast, HB 826 provides that the exception applies.<sup>22</sup>

...when *he or she is within a school safety zone* or on a bus or other transportation furnished by a school...

(Emphasis added.) The exception in HB 826 is much more expansive than in HB 60 in that it would apply any time a weapons carry licensee was *within* a school safety zone. HB 60 would apply only when the licensee was *carrying or picking up a student* in the school safety zone. This same analysis also applies to paragraphs (c)(6) and (c)(8).

The conflicts with respect to definitions, the crime itself, and exceptions to the crime set out above are not exhaustive. In addition to these conflicting provisions, there are numerous other differences between HB 60 and HB 826 with respect to Code Section 16-11-127.1 which are irreconcilable.

Lastly, giving effect to both HB 60 and HB 826 with respect to Code Section 16-11-127.1 would result in nonsensical wording of the statute. The Code Revision Commission has no authority to rewrite a statute, giving effect to wording that was not enacted by the General Assembly.<sup>23</sup>

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<sup>22</sup> See lines 110-111 of HB 826 (LC 29 5943S/AP).

<sup>23</sup> See O.C.G.A. § 28-9-5. To give effect to both HB 60 and HB 826 with respect to Code Section 16-11-127.1, the Court would have to rewrite the statute in order to reconcile the bills.

As a result, because HB 60 was signed after HB 826, the amendments to such Code section by HB 60 were properly given effect and the conflicting changes by HB 826 were properly not given effect, pursuant to the requirements contained in Code Section 28-9-5. Accordingly, Plaintiff's Complaint against Legislative Branch Defendants should be dismissed.

**4. The Code Revision Commission as an entity is not subject to a writ of mandamus.**

A government entity cannot be subjected to a writ of mandamus. "What the writ of mandamus seeks to enforce is the personal obligation of the individual to whom it is addressed. ... The writ does not reach the office nor can it be directed to the office. It acts directly on the person of the officer or other respondent, coercing him in the performance of a plain duty. It is a personal action against the officer and not one in rem against the office." McCallum v. Bryan, 213 Ga. 669, 670 (1957) (holding there was no merit in a contention that a city should have been made a party to mandamus proceedings against various individual city officials).

As a matter of law, the writ of mandamus sought by Plaintiff does not reach the Code Revision Commission as an entity nor can it be directed to the Code Revision Commission. The Complaint against the Code Revision Commission should be dismissed.

**5. Writs of mandamus to less than a majority of the individual members of the Code Revision Commission would be fruitless.**

"Mandamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless...." O.C.G.A. § 9-6-26.

The Code Revision Commission consists of 15 members (two *ex officio* members and 13 appointed members). O.C.G.A. § 28-9-2(a). The only members of the Commission who have been served individually with the Complaint by Plaintiff in this action are the two *ex officio* members (*i.e.*, Speaker of the House of Representatives, David Ralston; and President of the Senate, Lowell "Casey" Cagle).<sup>24</sup> Even if writs of mandamus were issued against the *ex officio* members, such writs would be fruitless; those two members alone do not constitute a majority of the 15 members of the Commission, and directing less than a majority of the members to take action would be ineffective. Since the writs would be fruitless, they should not be issued as a matter of law. Accordingly, Plaintiff's Complaint should be dismissed.

### **III. CONCLUSION**

For any one or more of the reasons stated above, Plaintiff has no legal right to the relief sought by means of writ of mandamus in this case. Furthermore, an adequate remedy exists through the political, legislative process for Plaintiff to lobby the General Assembly to amend the current Official Code of Georgia Annotated by means of further legislation. Accordingly, the Court should: (1) dismiss Plaintiff's Complaint, with prejudice, for failure

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<sup>24</sup> See note 1, supra.

to state a claim for which relief can be granted; or, in the alternative, (2) grant judgment on the pleadings in favor of Defendants Code Revision Commission; David Ralston, Speaker of the Georgia House of Representatives; Lowell "Casey" Cagle, President of the Georgia Senate; and John Does 1 through 13.

Respectfully submitted this 18<sup>th</sup> day of May, 2015.



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Code Revision Commission; and  
John Does 1 through 13, appointed members of the Code Revision Commission.



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**OFFICE OF SECRETARY OF STATE**

*I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that*

the eighteen pages of photocopied matter hereto attached contains a true and correct copy of an Act approved by the Governor on March 13, 2015 numbered Act No. 9, House Bill No. 90; all as same appear of file and record in this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 18th day of March, in the year of our Lord Two Thousand and Fifteen and of the Independence of the United States of America the Two Hundred and Thirty-Ninth.

*B. P. Kemp*

Brian P. Kemp, Secretary of State

ENROLLMENT

March 13 2015

The Committee of the House on Information and Audits has examined the within and finds the same properly enrolled.

Mike Cherkas

Chairman

David Dalton

Speaker of the House

[Signature]

Clerk of the House

Craig Cagle

President of the Senate

Paul G. Cook

Secretary of the Senate

Chris W. Pibey

Received

Secretary, Executive Department

This 13<sup>th</sup> day of March 2015

Approved

Nathan Deal

Governor

This 13 day of March 2015

H.B. No. 90  
General

Act No. 9  
Assembly



AN ACT

To amend the Official Code of Georgia Annotated, so as to revise, modernize, correct errors or omissions in, and reenact the statutory portion of said Code, as amended, in furtherance of the work of the Code Revision Commission; to repeal portions of said Code, or Acts in amendment thereof, which have become obsolete, have been declared to be unconstitutional, or have been preempted or superseded by subsequent laws; to provide for other matters relating to revision, reenactment, and publication of said Code; to provide for effect in event of conflicts; to provide for an effective date; to repeal conflicting laws; and for other purposes.

IN HOUSE

Read 1<sup>st</sup> time 1-27-15  
Read 2<sup>nd</sup> time 1-28-15  
Read 3<sup>rd</sup> time 2-18-15

And Passed  
Yeas 169 Nays 0

[Signature]

Clerk of the House

IN SENATE

Read 1<sup>st</sup> time 2-19-15  
Read 2<sup>nd</sup> time 3-04-15  
Read 3<sup>rd</sup> time 3-09-15

And Passed  
Yeas 52 Nays 0

Passed Both Houses

Paul G. Cook

Secretary of the Senate

By: Rep. Willard of the 51<sup>st</sup>

AN ACT

To amend the Official Code of Georgia Annotated, so as to revise, modernize, correct errors or omissions in, and reenact the statutory portion of said Code, as amended, in furtherance of the work of the Code Revision Commission; to repeal portions of said Code, or Acts in amendment thereof, which have become obsolete, have been declared to be unconstitutional, or have been preempted or superseded by subsequent laws; to provide for other matters relating to revision, reenactment, and publication of said Code; to provide for effect in event of conflicts; 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.**

Reserved.

**SECTION 2.**

Reserved.

**SECTION 3.**

Reserved.

**SECTION 4.**

Reserved.

**SECTION 5.**

Reserved.

**SECTION 6.**

Reserved.

**SECTION 7.**

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended in:

(1) Code Section 7-1-95, which is repealed, by designating said Code section as reserved.

- (2) Code Section 7-1-621, relating to definitions relative to interstate acquisitions of banks and bank holding companies, in subparagraph (A) of paragraph (4), by deleting "the Office of Thrift Supervision," which refers to an obsolete entity.
- (3) Code Section 7-1-650, relating to the powers of operation and regulation relative to credit unions, at the end of paragraph (9), by inserting "and".
- (4) Code Section 7-1-668, relating to the conversion of state and federal credit unions, at the end of paragraph (2) of subsection (b), by inserting "and".
- (5) Code Section 7-1-683.1, relating to locations for conduct of business, contracting with authorized agent, and requirements of an agent in the sale of payment instruments, in paragraph (5) of subsection (c), by replacing "but not limited," with "but not limited to,".
- (6) Code Section 7-1-685, relating to the expiration and renewal of licenses relative to the sale of payment instruments, at the end of the second sentence, by replacing "regulation" with "regulations".
- (7) Code Section 7-1-689, relating to record keeping, investigations and examinations by the Department of Banking and Finance, subpoenas, confidentiality, and limitations on civil liability, in paragraphs (1), (5), and (6) of subsection (l), by replacing "fax" with "facsimile".
- (8) Code Section 7-1-698, relating to the continuing effectiveness of existing licenses relative to the sale of checks and money orders, by replacing "Article 4 of Chapter 1 of this title" with "the former provisions of this article".
- (9) Code Section 7-1-706, relating to record keeping obligations, investigations and examinations by the department, examination fees, administration of oaths and issuing of subpoenas, confidentiality, and civil liability, in paragraphs (1) and (5) of subsection (l), by replacing "fax" with "facsimile".
- (10) Code Section 7-1-709.2, relating to the continuing effectiveness of existing licenses relative to the cashing of payment instruments, by replacing "Article 4 of Chapter 1 of this title" with "the former provisions of this article".
- (11) Code Section 7-1-1000, relating to definitions relative to licensing of mortgage lenders and mortgage brokers, in paragraph (11), by deleting "the Director of the Office of Thrift Supervision," which refers to an obsolete entity and in paragraph (22), by replacing "paragraph (5) of subsection (a) of Code Section 7-1-1002" with "subsection (a.1) of Code Section 7-1-1002".
- (12) Code Section 7-1-1002, relating to the transaction of business without a license, registration, or exemption prohibited, knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited, and liability of persons controlling violators, in subsection (a), in paragraph (2), by deleting "a person", in paragraph (3), by deleting "such person" and by adding "or" at the end, in paragraph (4), by replacing "; or" with a period at

the end, and in paragraph (5), by redesignating said paragraph as subsection (a.1) and in subsection (c), by replacing "subsection (a)" with "subsection (a), (a.1)",

(13) Code Section 7-1-1019, relating to criminal penalties relative to the licensing of mortgage lenders and mortgage brokers, in paragraph (1), by replacing "subsection (a)" with "subsection (a) or (a.1)".

#### **SECTION 8.**

Title 8 of the Official Code of Georgia Annotated, relating to buildings and housing, is amended in:

(1) Code Section 8-2-24, relating to the appointment of an advisory committee, reimbursement of members for expenses, use of subcommittees, submittal of proposed amendments, modifications, and new provisions to committee and meeting times of committee relative to the Department of Community Affairs, in paragraph (1) of subsection (a), by replacing "Georgia Safety Fire Commissioner" with "Safety Fire Commissioner".

(2) Code Section 8-2-131, relating to definitions relative to manufactured homes, in paragraph (1), by replacing "Georgia Safety Fire Commissioner" with "Safety Fire Commissioner".

(3) Code Section 8-2-160, relating to definitions relative to installation of manufactured homes and mobile homes, in paragraph (1), by replacing "Georgia Safety Fire Commissioner" with "Safety Fire Commissioner".

#### **SECTION 9.**

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended in:

(1) Code Section 9-11-124, relating to the form of motion for production of documents under Code Section 9-11-34, near the end of the form, by deleting the comma following "A.B.",

#### **SECTION 10.**

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended in:

(1) Code Section 10-5-30, relating to registration requirements for broker-dealers and exemptions, in paragraph (2) of subsection (b), by replacing "the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision" with "or the Federal Deposit Insurance Corporation", as the Office of Thrift Supervision is an obsolete entity.

**SECTION 11.**

Reserved.

**SECTION 12.**

Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, is amended in:

- (1) Code Section 12-2-8, relating to promulgation of minimum standards and procedures for protection of natural resources, environment, and vital areas of state and stream and reservoir buffers, at the end of subparagraphs (g)(1)(A) and (g)(2)(B), by deleting "and".
- (2) Code Section 12-5-546.2, relating to the notification in advance of any state funded augmentation projects relative to the Flint River, in subsection (c), by replacing "board of natural resources" with "board".

**SECTION 13.**

Reserved.

**SECTION 14.**

Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships, and associations, is amended in:

- (1) Code Section 14-5-5, which is repealed, by designating said Code section as reserved.
- (2) Code Section 14-5-10, which is repealed, by designating said Code section as reserved.

**SECTION 15.**

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in:

- (1) Code Section 15-1-16, relating to mental health court divisions, by redesignating paragraph (10) of subsection (b) as new paragraph (3) of subsection (a) and in such newly redesignated paragraph, by replacing "As used in this Code section, the term 'risk and needs assessment'" with "'Risk and needs assessment'".
- (2) Code Section 15-6-28.1, which is reserved, by designating said Code section as repealed.
- (3) Code Section 15-6-88.2, relating to the monthly contingent expense allowance schedule for the operation of the office of clerk of the superior court, in the right-hand column of the schedule heading, by replacing "Expense" with "Expenses".
- (4) Code Section 15-9-64.1, relating to the monthly contingent expense allowance schedule for the operation of the office of judge of the probate court, in the right-hand column of the schedule heading, by replacing "Expense" with "Expenses".

(5) Code Section 15-10-23.1, relating to the monthly contingent expense allowance for the operation of the office of magistrate court, in the right-hand column of the schedule heading, by replacing "Expense" with "Expenses".

(6) Code Section 15-10-54, relating to the use of personally identifiable data in court documentation and redaction relative to civil proceedings in the magistrate court, at the end of the introductory paragraph of subsection (a), by replacing "birth date" with "birth date shall include only".

(7) Code Section 15-10-105.2, relating to the monthly contingent expense allowance for the operation of the office of magistrate court, in the right-hand column of the schedule heading, by replacing "Expense" with "Expenses".

(8) Code Section 15-11-481, relating to victim impact statement in delinquency proceedings, in subsection (f), by replacing "subsection (b)" with "subsection (d)" both times the term appears.

(9) Code Section 15-16-20.2, relating to the monthly contingent expense allowance for the operation of the sheriff's office, in the right-hand column of the schedule heading, by replacing "Expense" with "Expenses".

#### SECTION 16.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended in:

(1) Code Section 16-8-14.1, relating to refund fraud, in subsection (c), at the end of paragraph (1), by replacing the semicolon with a period and at the end of paragraph (2), by replacing "; and" with a period.

(2) Code Section 16-11-90, relating to the prohibition on nude or sexually explicit electronic transmissions, in subsection (e), at the end of paragraph (4), by deleting "or" and at the beginning of paragraph (6), by replacing "The transmission is" with "A transmission that is".

(3) Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school, in paragraph (1) of subsection (b), by replacing "within a school safety zone or at a school function" with "within a school safety zone, at a school function".

(4) Code Section 16-11-138, relating to defense of self or others as an absolute defense relative to the carrying and possession of firearms, by replacing "Title 16" with "this title".

(5) Code Section 16-11-160, relating to the use of machine guns, sawed-off rifles, sawed-off shotguns, or firearms with silencers during the commission of certain offenses and enhanced criminal penalties, in paragraph (1) of subsection (a), by replacing "or a firearm" with "or firearm".



(6) Code Section 16-11-171, relating to definitions relative to the Brady law regulations, at the end of paragraph (2), by deleting ", or Chapter 16 of Title 43."

(7) Code Section 16-12-129, relating to defense of self or others as an absolute defense to any violation under the "Transportation Passenger Safety Act," by replacing "Title 16" with "this title".

(8) Code Section 16-13-21, relating to definitions relative to the "Georgia Controlled Substances Act," in the introductory language of paragraph (10), by inserting a comma following "United States", in paragraph (23), subparagraphs (A) and (B), by replacing "or to administer" with "or administer" and subparagraphs (C) and (D), by replacing "federal Drug Enforcement Administration" with "DEA", and in paragraph (26.1), by replacing "Federal" with "federal".

(9) Code Section 16-13-29, relating to Schedule V controlled substances under the "Georgia Controlled Substances Act," in paragraph (5), by deleting "(OTC)", by replacing "U.S. Drug Enforcement Administration (DEA)" with "DEA", and by replacing "recordkeeping" with "record keeping".

(10) Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and penalties, in division (g)(2)(D)(ii), by deleting the second extraneous quotation mark after "Firearm".

(11) Code Section 16-13-31.1, relating to trafficking in ecstasy, sentencing, and variation, in the introductory language of paragraph (4) of subsection (b), by replacing "paragraph" with "subsection".

(12) Code Section 16-13-71, relating to the definition of a "dangerous drug," in paragraphs (512.5) and (671) of subsection (b), by replacing "see" with "See" and in paragraph (8) of subsection (e), by replacing "Federal" with "federal".

(13) Code Section 16-14-3, relating to definitions relative to the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," by deleting paragraph (5), as such definition is not used in Chapter 14, and redesignating current paragraphs (6) through (12) as new paragraphs (5) through (11).

#### SECTION 17.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended in:

(1) Code Section 17-5-52.1, relating to disposal of forfeited or abandoned firearms, innocent owners, auctions, record keeping, and liability of government entities, in paragraphs (1) and (2) of subsection (d), by deleting ", and Chapter 16 of Title 43 and who are authorized to receive such firearms under the terms of such license."

(2) Code Section 17-10-1, relating to the fixing of a sentence, suspension or probation of sentence, change in sentence, eligibility for parole, prohibited modifications, and exceptions, in subsection (d), by inserting "of subsection (a)" following "paragraph (2)".

#### **SECTION 18.**

Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, is amended in:

(1) Code Section 18-5-3, relating to exemption for debt adjustment by certain individuals or entities, by deleting "the Office of Thrift Supervision," which refers to an obsolete entity.

#### **SECTION 19.**

Reserved.

#### **SECTION 20.**

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in:

(1) Code Section 20-2-182, relating to program weights to reflect funds for payment of salaries and benefits, maximum class size, reporting requirements, and application to specific school years, in subsection (h), by deleting "pursuant to Code Section 20-2-232", as such reference is obsolete.

(2) Code Section 20-2-200, relating to regulation of certificated professional personnel by the Professional Standards Commission, rules and regulations, and fees, in paragraphs (2) and (3) of subsection (b), by replacing "course work" with "coursework".

(3) Code Section 20-2-217, relating to professional and staff development stipends relative to the State Board of Education, by deleting "required under Code Section 20-2-232", as such reference is obsolete.

(4) Code Section 20-2-320, relating to the Education Information Steering Committee, identification of data to implement the Quality Basic Education Program, and a state-wide comprehensive educational information network, in subsection (c), by replacing "the House Budget and Research Office; the House Research Office; and the Senate Research Office" with "and the House Budget and Research Office" and by replacing "Appropriation Committees" with "Appropriations Committees".

(5) Code Section 20-2-327, relating to recognition of advanced proficiency/honors courses and counseling and development of individual graduation plans, in paragraph (2) of subsection (a), by replacing "course work" with "coursework".

(6) Code Section 20-3-45.1, relating to the powers and duties of the Georgia Historical Records Advisory Council, in paragraph (10), by replacing "this article" with "this part" each time the term appears.

(7) Code Section 20-3-47.1, relating to the Division of Archives and History of the University System of Georgia as administrator of surplus state books, by replacing "this article" with "this part".

(8) Code Section 20-3-519, relating to definitions relative to HOPE scholarships and grants, in paragraphs (26.1) and (27), by replacing "student that" with "student who" each time the term appears.

(9) Code Section 20-3-519.5, relating to student eligibility requirements for a HOPE grant, in paragraph (1) of subsection (a), by replacing "towards" with "toward" and in subsection (c), by replacing "course work" with "coursework".

#### **SECTION 21.**

Reserved.

#### **SECTION 22.**

Reserved.

#### **SECTION 23.**

Reserved.

#### **SECTION 24.**

Reserved.

#### **SECTION 25.**

Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is amended in:

(1) Code Section 25-2-6, relating to the state fire marshal as head of the Safety Fire Division, by replacing "office of Commissioner" with "office of the Commissioner".

(2) Code Section 25-2-12, relating to the adoption of state fire safety standards and enforcement, investigations, excuse from compliance with standards, and interpretation of standards and granting variances therefrom by the Commissioner of Insurance, at the end of subsection (b), by replacing "subsection (a) of Code Section 25-2-12" with "subsection (a) of this Code section".

(3) Code Section 25-2-32, relating to the maintenance of records of fire losses, reports of losses by insurance companies, and reports of fires under provisions of the regulation of fire and other hazards to persons and property generally, in subsection (b), by replacing "office of the Safety Fire Commissioner" with "office of Safety Fire Commissioner".

(4) Code Section 25-2-40, relating to the requirement of smoke detectors in new dwellings and dwelling units and exceptions, in subsection (h), by replacing "office of the Safety Fire Commissioner" with "office of Safety Fire Commissioner".

(5) Code Section 25-3-24, relating to the authority of the executive director of the Georgia Firefighter Standards and Training Council to determine compliance of minimum requirements by local fire departments generally, by replacing "Georgia Forestry Commission" with "State Forestry Commission".

(6) Code Section 25-4-3, relating to the Georgia Firefighter Standards and Training Council and its establishment and organization, advisory committee, and expenses and allowances, in the introductory language of subsection (a), by replacing "eleven" with "11".

(7) Code Section 25-9-6, relating to the prerequisites to blasting or excavating and the marking of sites near utility facilities, in the introductory language of subsection (a), by replacing "facilities are either" with "facilities either are" and in subsection (b), by replacing "so as to not to obstruct signs" with "so as not to obstruct signs".

(8) Code Section 25-9-13, relating to penalties for violations under the "Georgia Utility Facility Protection Act," bonds, enforcement, advisory committee, and dispose of settlement recommendations, in the introductory language of subsection (a), by replacing "subsections" with "subsection".

(9) Code Section 25-11-8, relating to the requirement that installation, repair, or other work be performed or supervised by a certificate holder, in subsection (g), by replacing "Office of the Commissioner of Insurance" with "office of the Commissioner of Insurance".

#### SECTION 26.

Title 26 of the Official Code of Georgia Annotated, relating to food, drugs, and cosmetics, is amended in:

(1) Code Section 26-2-4, relating to the labeling, sale, or advertising of spring water, in subsection (a), by replacing "provided, however, water" with "provided, however, that water".

(2) Code Section 26-2-231, relating to definitions relative to milk and milk products, by revising paragraphs (1) through (8) of subsection (b) as follows:

(1) 'Grade A buttermilk';

(2) 'Grade A chocolate milk';

(3) 'Grade A milk, pasteurized';

(4) 'Grade A modified solids milk';

(5) 'Grade A skim milk';

(6) 'Grade A whole milk';

(7) 'Pasteurization'; and

- (8) "Raw cow's milk."
- (3) Code Section 26-2-249, relating to unlawful acts relative to milk and milk products, at the end of paragraph (11), by inserting "or".
- (4) Code Section 26-2-261, relating to classification of eggs, at the end of paragraph (1) of subsection (a), by inserting "and".
- (5) Code Section 26-2-296, relating to duties of the Commissioner of Agriculture, at the end of paragraph (1) of subsection (a), by replacing the period with "; and".
- (6) Code Section 26-3-8, relating to when a drug or device is deemed misbranded, at the end of paragraph (10), by inserting "or".
- (7) Code Section 26-4-5, relating to definitions relative to pharmacists and pharmacies, in paragraph (9), by replacing "coasimilar" with "similar".
- (8) Code Section 26-4-21, relating to the eligibility requirements for members of the Georgia State Board of Pharmacy and their oath of office, in subsection (c), by replacing "Office of the Governor" with "office of the Governor" both times those terms appear.

#### **SECTION 27.**

Title 27 of the Official Code of Georgia Annotated, relating to game and fish, is amended in:

- (1) Code Section 27-2-3.1, relating to hunting licenses, sportsman's license, license card carrier requirements, and creation of lifetime sportsman's licenses, by deleting reserved subsections (a) and (b) and redesignating current subsections (c) through (j) as new subsections (a) through (h), respectively.
- (2) Code Section 27-2-30, relating to the establishment of the Wildlife Endowment Fund and limitations on expenditures from the fund, in subsection (b), by replacing "subsection (f)" with "subsection (d)".

#### **SECTION 28.**

Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, is amended in:

- (1) Code Section 28-9-5, relating to publication of the Official Code of Georgia Annotated, authority of the Code Revision Commission to make corrections and editorial changes, effect of changes, treatment of multiple amendments enacted at the same session, duty to prepare and have introduced legislation reenacting and correcting the Code, and effect of reenacting the Code, in subsection (b), by replacing "the order in which bills became law" with "the order in which bills became Acts" and in subsection (c), by replacing "Except as otherwise provided by law," with "Except as otherwise provided by general law,".

**SECTION 29.**

Reserved.

**SECTION 30.**

Reserved.

**SECTION 31.**

Reserved.

**SECTION 32.**

Reserved.

**SECTION 33.**

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in:

- (1) Code Section 33-8-8.3, relating to the funding of services, or the reduction of ad valorem taxes, in unincorporated areas of counties and the powers and duties of a governing authority, at the end of subparagraph (a)(1)(D), by inserting "and".
- (2) Code Section 33-23-43, relating to the authority of insurance adjusters and penalty for violation, in the introductory language of paragraph (4) of subsection (c), by replacing "subsection" with "paragraph".
- (3) Code Section 33-23-43.1, relating to the requirements for public insurance adjuster contracts, at the beginning of the introductory language of subsection (a), by replacing "Requirements for public adjusters" with "Public adjusters".
- (4) Code Section 33-24-44, relating to cancellation of insurance policies generally, in subsection (b), by replacing "Code Section 33-24-14 in person" with "Code Section 33-24-14, in person," and by replacing "United States mails" with "United States mail" and in subsection (c), by replacing "United States mails" with "United States mail".
- (5) Code Section 33-24-44.1, relating to procedure for cancellation of insurance policy by insured and notice, in subsection (b), by replacing "Code Section 33-24-14 in person" with "Code Section 33-24-14, in person,".
- (6) Code Section 33-24-45, relating to the cancellation or nonrenewal of automobile or motorcycle insurance policies and procedure for review by the Commissioner of Insurance, in paragraph (1) of subsection (e) and in subsection (m), by replacing "Code Section 33-24-14 in person" with "Code Section 33-24-14, in person," and by replacing "United States mails" with "United States mail".
- (7) Code Section 33-24-46, relating to the cancellation or nonrenewal of certain property insurance policies, in subsections (d) and (h), by replacing "Code Section 33-24-14 in

person" with "Code Section 33-24-14, in person," and by replacing "United States mails" with "United States mail".

(8) Code Section 33-24-47, relating to notice required of termination or nonrenewal, increase in premium rates, or change restricting coverage and failure of insurer to comply, in subsection (b), by replacing "Code Section 33-24-14 in person" with "Code Section 33-24-14, in person," and in subsection (f), by replacing "Code Section 33-24-14 by" with "Code Section 33-24-14 or by".

(9) Code Section 33-24-47.1, relating to the notice prior to cancellation or nonrenewal of an individual or group accident and sickness insurance policy, in subsection (b), by replacing "United States mails" with "United States mail".

(10) Code Section 33-30-13, relating to notices of premium increases to be mailed or delivered to group insurance policyholder and notification of impact of federal Patient Protection and Affordable Care Act, in subsections (b) and (c), by redesignating current subsection (c) as new subsection (b), as current subsection (b) was repealed on December 31, 2014.

(11) Code Section 33-45-1, relating to definitions relative to continuing care providers and insurance facilities, by redesignating current paragraph (12) as new paragraph (13) and by redesignating current paragraph (13) as new paragraph (12), respectively, and reordering such paragraphs so as to put definitions in alphabetical order.

#### **SECTION 34.**

Reserved.

#### **SECTION 35.**

Reserved.

#### **SECTION 36.**

Reserved.

#### **SECTION 37.**

Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in:

(1) Code Section 37-2-6.1, relating to community service boards and the executive director, staff, budget, and facilities, powers and duties, and exemption from state and local taxation, by redesignating current paragraph (1) of subsection (a) as new subsection (a.1).

(2) Code Section 37-4-40.1, which is reserved, by designating said Code section as repealed.

(3) Code Section 37-4-40.2, which is reserved, by designating said Code section as repealed.

(4) Code Section 37-4-40.3, which is reserved, by designating said Code section as repealed.

(5) Code Section 37-4-40.4, which is reserved, by designating said Code section as repealed.

(6) Code Section 37-4-40.5, which is reserved, by designating said Code section as repealed.

#### **SECTION 38.**

Reserved.

#### **SECTION 39.**

Title 39 of the Official Code of Georgia Annotated, relating to minors, is amended in:

(1) Code Section 39-2-10, which is repealed, by designating said Code section as reserved.

#### **SECTION 40.**

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended in:

(1) Code Section 40-1-1, relating to definitions relative to motor vehicles and traffic, by redesignating current paragraphs (15.3), (15.5), and (15.6) as new paragraphs (15.1), (15.2), and (15.3), respectively.

(2) Code Section 40-5-81, relating to program optional and certification and approval of courses relative to restoration of licenses, at the end of subsection (a), by adding a period.

#### **SECTION 41.**

Title 41 of the Official Code of Georgia Annotated, relating to nuisances, is amended in:

(1) Code Section 41-2-6, which is repealed, by designating said Code section as reserved.

#### **SECTION 42.**

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended in:

(1) Code Section 42-8-112, relating to timing for issuance of ignition interlock device limited driving permit, documentation required, and reporting requirement, in subparagraph (b)(2)(A), by replacing "permit" with "probationary license".

#### **SECTION 43.**

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended in:

(1) Code Section 43-3-6, relating to the duties of executive director serving as the chief executive officer of the Georgia State Board of Accountancy, at the end of paragraph (5) of subsection (a), by replacing the period with a semicolon.



(2) Code Section 43-10A-13, relating to requirements for licensure in marriage and family therapy, in paragraph (1) of subsection (a) and in subparagraphs (a)(2)(B) and (a)(2)(C), by replacing "course work" with "coursework".

(3) Code Section 43-14-6, relating to powers and duties of divisions relative to electrical contractors, plumbers, conditioned air contractors, low-voltage contractors, and utility contractors, in subparagraph (a)(4)(G), by replacing "conditioned air work" with "conditioned air contracting" each time the term appears.

(4) Code Section 43-14-13, relating to applicability of chapter relative to electrical contractors, plumbers, conditioned air contractors, low-voltage contractors, and utility contractors, in subsection (j), by replacing "conditioned air work" with "conditioned air contracting".

(5) Code Section 43-26-53, relating to reportable incidents relative to mandatory reporting requirements for nurses, in subsection (b), by replacing "applicable board" with "board" each time the term appears.

#### **SECTION 44.**

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in:

(1) Code Section 44-14-65, which is repealed, by designating said Code section as reserved.

#### **SECTION 45.**

Reserved.

#### **SECTION 46.**

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended in:

(1) Code Section 46-5-1, relating to exercise of power of eminent domain by telephone companies, placement of posts and other fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks, liability of telephone companies for damages, required information, and due compensation, in subparagraph (b)(9)(I), by replacing "32.5320" with "32.5230".

#### **SECTION 47.**

Reserved.

#### **SECTION 48.**

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in:

(1) Code Section 48-5C-1, relating to definitions, exemption from taxation, allocation and disbursement of proceeds collected by tag agents, fair market value of vehicle appealable, and report relative to alternative ad valorem tax on motor vehicles, in subparagraph (d)(15)(D), by replacing "this title" with "Title 40".

(2) Code Section 48-8-2, relating to definitions relative to state sales and use tax, in paragraph (30.1), which is repealed, by deleting said paragraph designation; at the beginning of the second and third sentences of paragraph (37), by deleting the quotation marks around "Tangible personal property"; in the second sentence of the introductory text of paragraph (39), by deleting the quotation marks around "telecommunications service" and at the beginning of the third sentence, by deleting the quotation marks around "Telecommunications service"; and at the beginning of the second sentence of paragraph (43), by deleting the quotation marks around "Voice mail service".

#### **SECTION 49.**

Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended in:

(1) Code Section 49-4-6, relating to reserves, income, and resources to be disregarded relative to public assistance, by deleting subsection (b), which contains obsolete references, and redesignating current subsection (c) as new subsection (b).

#### **SECTION 50.**

Reserved.

#### **SECTION 51.**

Reserved.

#### **SECTION 52.**

Reserved.

#### **SECTION 53.**

Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and administration of estates, is amended in:

(1) Code Section 53-11-11, relating to authentication or exemplification of document to be filed in the probate court, by replacing "Code Section 24-7-922" with "Code Section 24-9-922".

#### SECTION 54.

(a) Except for Title 47, the text of Code sections and title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, division, and subdivision numbers and designations as contained in the Official Code of Georgia Annotated published under authority of the state by The Michie Company in 1982 and contained in Volumes 3 through 40 of such publication or replacement volumes thereto, as amended by the text and numbering of Code sections as contained in the 2014 supplements to the Official Code of Georgia Annotated published under authority of the state in 2014 by LEXIS Publishing, are hereby reenacted.

(b) Annotations; editorial notes; Code Revision Commission notes; research references; notes on law review articles; opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings, except as otherwise provided in the Code; catchlines of Code sections or portions thereof, except as otherwise provided in the Code; and rules and regulations of state agencies, departments, boards, commissions, or other entities which are contained in the Official Code of Georgia Annotated are not enacted as statutes by the provisions of this Act. Material which has been added in brackets or parentheses and editorial, delayed effective date, effect of amendment, or other similar notes within the text of a Code section by the editorial staff of the publisher in order to explain or to prevent a misapprehension concerning the contents of the Code section and which is explained in an editorial note is not enacted by the provisions of this section and shall not be considered a part of any statutes.

(c) The reenactment of the statutory portion of the Official Code of Georgia Annotated by subsection (a) of this section shall not affect, supersede, or repeal any Act of the General Assembly, or portion thereof, which is not contained in the Official Code of Georgia Annotated and which was not repealed by Code Section 1-1-10, specifically including those Acts which have not yet been included in the text of the Official Code of Georgia Annotated because of effective dates which extend beyond the effective date of the Code or the publication date of the Code or its supplements.

(d) The provisions contained in Sections 1 through 53 of this Act and in the other Acts enacted at the 2015 regular session of the General Assembly of Georgia shall supersede the provisions of the Official Code of Georgia Annotated ratified and reenacted by subsection (a) of this section.

(e) In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2015 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.

**SECTION 55.**

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

**SECTION 56.**

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

APPROVED  
MAR. 13 2015  
MAR. 5 2015  
BY GOVERNOR  
BY GOVERNOR

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

GEORGIACARRY.ORG, INC.                    )                   Civil Action No.  
  )                   2015 CV 256659  
  )  
Plaintiff;                                        )  
  )  
v.    )  
  )  
CODE REVISION COMMISSION                )  
  )  
et al.)    )  
  )  
Defendants.                                      )


**CERTIFICATE OF SERVICE**

I do hereby certify that I have served the within and foregoing **LEGISLATIVE BRANCH DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS, AND BRIEF IN SUPPORT** by electronic service of a portable document format (PDF) copy of the same, pursuant to O.C.G.A. § 9-11-5, sent via email addressed to counsel of record in this matter as follows:

Mr. John R. Monroe, at: [jrm@johnmonroelaw.com](mailto:jrm@johnmonroelaw.com)

Ms. Rebecca J. Dobras, at: [rdobras@law.ga.gov](mailto:rdobras@law.ga.gov)

This 18<sup>th</sup> day of May, 2015.

  
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