



A Win for Charter Schools

By James Touchton
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Background

Charter schools have grown by leaps and bounds over the last decade. In the past three years alone, the number of charter schools in Georgia has risen from 71 to 121, gained more than eight points in the number of schools making Adequate Yearly Progress (AYP) at 85%, and achieved an 81% graduation rate. This is a remarkable accomplishment considering that Georgia has only been in the charter school business since 1995, when the first three schools opened as a result of the Georgia Charter School Act of 1993. Along the way, the Georgia General Assembly passed the Georgia Charter



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Governor Perdue Signs Common Sense Lawful Carry Act

Senator Seabaugh's Legislation Offers Clarity to Lawful Carry of Firearms



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At long last, the Georgia General Assembly has passed comprehensive legislation aimed at clarifying the law regarding where and when a Georgian may carry a firearm, and increasing the efficiency of the weapons carry license application process. Governor Sonny Perdue signed the bill into law on June 8, 2010. Even before Senate Bill 308 became law, however, its passage caught the attention of politicians in Washington, D.C.

The new law, known as the Common Sense Lawful Carry Act, re-defines the crime of carrying a weapon without a valid license for the sake of clarity. Generally speaking, even without a weapons carry license it will be legal to carry a weapon or long gun anywhere on your own property. You may carry a loaded long gun anywhere not otherwise prohibited by law, provided the gun is carried openly. Conversely, handguns may be carried almost anywhere if they

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are unloaded and enclosed in a case.

The number of places where a weapon may be legally carried increases significantly if you obtain a weapons carry license. One of the main accomplishments in this legislation is the removal of the vague “public gatherings” clause. Instead, the new law creates a misdemeanor criminal penalty for carrying a weapon in an unauthorized location. The unauthorized locations are specifically listed and defined in statute, meaning that a person with a valid license will be allowed to carry a firearm in every location throughout Georgia that is not excluded by law.

The law attempts to balance the rights of law-abiding gun owners with those of private property owners. With this goal in mind, the sweeping provision allowing license holders to carry their weapons anywhere in the state not specifically prohibited in statute is somewhat limited by the ability of any person in legal control of private property to forbid possession of weapons on their property. The practical application of this delicate balance remains to be seen.

The goal in re-writing this statute was not necessarily to expand the number of places where law-abiding firearm owners could legally carry their weapons, but rather to ensure that the law is clear on which places are off-limits. There is

potential for confusion due to an exception to the ban on weapons in bars, if the owner permits license holders to carry on the premises. Since each bar owner may come to a different decision and signage is not required, it will be the responsibility of the license holder to ask about the policy and ensure that he or she is not breaking the law.



One of the more controversial aspects of the law is the elimination of the school safety zone that, until the enactment of this bill, prohibited the possession of a weapon or explosive within one thousand feet of any elementary, secondary or post-secondary school property. In practice, law-abiding citizens carrying their firearms were technically breaking the law every time they entered a school safety zone, even when they did not come onto school property. Carrying a weapon in a school safety zone was a felony offense, a harsh reality for those who merely drove past a

school while in legal possession of a weapon.

Senate Bill 308 maintains the ban on carrying weapons and explosives while on school property, at a school function, or on any transportation furnished by a school, as well as the felony punishment for those who *do not have* a valid weapons carry license. However, the penalty for license holders will be downgraded to a misdemeanor and license holders will be entirely excluded from punishment under the statute for weapons legally kept in a vehicle that is parked on or in transit through school property.

In keeping with the theme of clarity, the law is precise in listing the types of people who will be prohibited from receiving a weapons carry license in Georgia. There will also be significant changes made to the licenses themselves in order to prevent duplication and tampering, such as requiring a color photograph of the licensee. As an additional deterrent, the possession of a counterfeit license with the intent to misrepresent any license information will be a felony offense.

The issue of carrying firearms into the non-federally secured areas of airports was hotly debated during the 2010 legislative session. Governor Perdue recently vetoed Senate Bill 291, sponsored by Senator David Shafer, which would have allowed license holders to carry their firearms inside any

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Schools Act of 1998, allowing the creation of start-up charter schools and created the Georgia Charter Schools Commission to authorize charter schools directly. The Legislature also passed a bill that requires local school districts to offer charter schools the opportunity to lease unused facilities at no cost.

Currently, charter schools enroll 64,949 students in Georgia or 4% of the total public school population. These schools boast a higher graduation test passing rate than traditional public schools. Additionally, 61% of the charter schools' overall student performance exceeds the two closest traditional public schools in their area. With such success, what has landed the Georgia Charter Schools Commission in the Fulton County Superior Court?

The issue originated during the 2008 Legislative Session when the Georgia General Assembly passed House Bill 881, creating the Georgia Charter Schools Commission (Commission), to provide approval for the funding for Commission-approved charter schools. The Commission, with members appointed by the Governor, Lt. Governor, Speaker of the House and Georgia Department of Education have the power to approve or deny petitions for commission charter schools and renew, not renew, or terminate Commission charter school petitions.



With a limited amount of state money to go around, local boards of education are fighting to hold onto every dollar. Several local boards believe that the state Commission is creating schools and funding them by directing local funds to the charter schools and bypassing the local district; thereby asserting that this is a violation of the state Constitution. A Fulton County superior court judge disagreed and ruled in favor of the state and charter schools, holding: "The General Assembly has provided sufficient guidelines. Commission charter schools are not required to be under the control or managed by an elected board of education. The funding is constitutional."

Lawsuit

The issue came to the forefront last year, when the Commission approved and provided funds in the amount of \$850,000 dollars for Ivy Prep

Academy, a girl's school with about 300 students in Gwinnett County. Ivy Prep had been previously denied a charter by the local board in June 2007. Gwinnett, joined by six other systems, sued on the Constitutional question of whether the Georgia Charter Schools Commission can approve and fund charter schools after a local school board has already denied the charter.

The first key issue is the reduction in state funds to local school districts, whose students attend Commission schools. The reduction is equal to the number of students attending a Commission school from a school district times the total amount of state and local funds per pupil that the local district spends on its own schools and charter schools. Local districts would prefer the state to fund the entire cost of Commission schools rather

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than deducting any amount from their state funds (including the state funding per pupil and an extra amount equal to the local district's local tax contribution per pupil). For non-Commission charter schools, the local district receives its regular state funding per pupil and provides charter schools with a combination of state funding and local taxes.

The second key issue is the state's ability to approve a local charter school, even after being denied by the local board of education.

The attorney for Ivy Prep Academy argued that school districts are not in favor of the law because it takes away the extra money they were receiving, whether a student attended their school or left to attend another charter school. According to Bruce Brown, Ivy Prep's attorney, "What the districts do not get is a windfall for students leaving their system." Judge Wendy Shoob, who ruled in favor of Ivy Prep and the state, also noted that the money the district was losing was the same as a student who leaves the state and moves to Alabama. If a student leaves the state, the district no longer will receive the money, much like when a stu-



dent leaves the traditional public school for a Commission-approved school.

The Gwinnett and Bulloch County school boards have both voted to appeal the case.

"When we got into this lawsuit, we were told that it would probably go all the way to the state Supreme Court," said Lewis Holloway, Bulloch Schools superintendent. "We don't believe [the Commission] is constitutional. It is taking \$400,000 away from our children. Over ten years, this is \$4 million." The Georgia Association of Educators sided with the seven school systems and filed an amicus brief with the court.

According to the *Atlanta Journal Constitution*, the Georgia School Boards Association and the Georgia School Superintendents Association plan to file briefs on behalf of the school districts as well.

What the Georgia Supreme Court will do remains to be seen. Until then, the Commission will continue to consider all applications that come its way and has recently hired an executive director to help with the development of Commission-approved schools. One thing is for sure, charter schools have come to Georgia and if their recent success is any indication, they are here to stay.

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Georgia airport, with the exception of areas controlled by the federal government. Senator Shafer's bill received enormous criticism from Democrats on Capitol Hill, and even prompted Representative Hank Johnson (D-GA) to retaliate by introducing the "Airport Security Act of

2010" in Congress. The main purpose of Representative Johnson's bill was to pre-empt the legislative process at the state level by disallowing the carrying of loaded firearms by non-law enforcement officials in any airport nationwide.

Senator Frank Lautenberg (D-

N.J.) introduced a substantially similar bill in the United States Senate, known as the "Firearm-Free Airports Act." Both Representative Johnson and Senator Lautenberg defended the introduction of their bills by referring to an increased need for gun control in a post-9/11

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world, despite the fact that Senator Shafer's bill would have only applied to valid weapons carry license holders.

Senator Shafer's bill was narrowly tailored to address only carrying weapons inside an airport, renewal licenses, and the unlawful seizure of firearms. Senate Bill 308, on the other hand, is a comprehensive overhaul of Georgia's weapons carry law resulting from several years of study and community input. Although Senator Seabaugh's legislation does not contain any direct reference to airports, the new law specifically allows a license holder to

carry a weapon in his or her vehicle while parked at or driving through government property, including airports. The new law ensures that people with valid weapons carry licenses may drive to and from an airport without fear of being charged with a crime, comparable to the elimination of the one thousand foot school safety zone.

There is an optimistic expectation that the Common Sense Lawful Carry Act will bring much needed guidance for weapons carry license holders, law enforcement personnel, and private property owners. Although the successful enact-

ment of this legislation has been years in the making, it would be unrealistic to anticipate that implementation will be completely smooth. As with any comprehensive re-write of a law closely linked with both constitutional rights and an emotionally charged subject matter, there may be a need for further clarification in certain areas, such as the right of private property owners to refuse entry to lawfully carrying license holders. Overall, however, the enactment of Senate Bill 308 will likely prove to be a huge improvement to the current firearms licensing system for all involved.

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