

## House Bill 479

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

## A BILL TO BE ENTITLED

## AN ACT

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

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **SECTION 1.**

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

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

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

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

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

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

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

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

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

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

44 (2) A law enforcement officer may make an arrest outside of the jurisdiction of the law  
45 enforcement agency by which he or she is employed:

46 (A) For purposes of division (a)(1)(B)(i) of this Code section:

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

49 or

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

52 **SECTION 2.**

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

55 **SECTION 3.**

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

58 "ARTICLE 5

59 17-4-80.

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

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

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

65 (3) 'Owner' means any person or his or her agent or employee who owns or operates a  
66 retail establishment or a food service establishment.

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

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

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

75 (2) An owner of a food service establishment who has reasonable grounds to believe that  
76 the individual sought to be detained has committed or attempted to commit theft by  
77 taking as set forth in Code Section 16-8-2 or theft of services as set forth in Code Section  
78 16-8-5;

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

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

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

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

90 (2) Except in circumstances involving use of force in defense of self or others, involving  
91 use of force in defense of a habitation, or involving use of force to prevent the  
92 commission of a forcible felony, a person acting pursuant to this Code section shall not  
93 use force which is intended or likely to cause great bodily harm or death, but may use

94 reasonable force to the extent that he or she reasonably believes is necessary to detain an  
95 individual."

96 **SECTION 4.**

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

100 "(c)(1) In the event a person is detained in a facility other than a municipal jail for an  
101 offense which is bailable only before a judge of the superior court, as provided in  
102 subsection (a) of this Code section, and a hearing is held pursuant to Code Section  
103 17-4-26 ~~or 17-4-62~~, the presiding judicial officer shall notify the superior court in writing  
104 within 48 hours that the arrested person is being held without bail. If the detained person  
105 has not already petitioned for bail as provided in subsection (d) of this Code section, the  
106 superior court shall notify the district attorney and shall set a date for a hearing on the  
107 issue of bail within 30 days after receipt of such notice."

108 **SECTION 5.**

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

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

118 **SECTION 6.**

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

123 **SECTION 7.**

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

128 "51-7-60.

129 Whenever the owner or operator of a ~~mercantile retail establishment as provided in Code~~  
 130 ~~Section 16-7-2 or a food service establishment as provided in Code Section 26-2-370 or~~  
 131 ~~any agent or employee of the owner or operator thereof~~ detains, ~~arrests,~~ or causes to be  
 132 ~~detained or arrested~~ any person ~~reasonably thought to be engaged in shoplifting or refund~~  
 133 ~~fraud and, as a result of the detention or arrest, pursuant to Code Section 17-4-80 and the~~  
 134 ~~person so detained or arrested~~ brings an action for false arrest or false imprisonment against  
 135 the owner, operator, agent, or employee, no recovery shall be had by the plaintiff in such  
 136 action where it is established by competent evidence:

137 (1) That the plaintiff had so conducted himself or herself or behaved in such manner as  
 138 to cause a person of reasonable prudence to believe that the plaintiff, at or immediately  
 139 prior to the time of the detention ~~or arrest,~~ was committing ~~the an~~ offense of ~~shoplifting,~~  
 140 ~~as defined by Code Section 16-8-14, or refund fraud as defined in Code Section 16-8-14;~~  
 141 ~~or authorized for detention pursuant to Code Section 17-4-80; and~~

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

144

**SECTION 8.**

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

148

**SECTION 9.**

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