The House Committee on Public Safety and Homeland Security offers the following substitute to SB 259:

A BILL TO BE ENTITLED AN ACT

1 To amend Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to 2 offenses against public order and safety, so as to revise various laws pertaining to firearms 3 and the carrying and possession of firearms and other weapons; to remove places of worship 4 from unauthorized locations a weapon or long gun may be carried; to clarify the type of 5 hospitalization as an inpatient in any mental hospital that prohibits the issuance of a weapons 6 carry license; to provide for online application for weapons carry licenses and renewal 7 licenses; to revise the database prohibition; to provide for relief; to provide for a preemption 8 for the discharge of firearms under certain circumstances; to amend Article 3 of Chapter 5 9 of Title 17 of the Official Code of Georgia Annotated, relating to disposition of property 10 seized, so as to revise requirements for the disposition of firearms in custody of law 11 enforcement agencies; to provide for causes of action; to amend Code Section 35-3-34 of the 12 Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal 13 records to private persons and businesses, resulting responsibility and liability of issuing 14 center, and provision of certain information to the FBI in conjunction with the National 15 Instant Criminal Background Check System, so as to provide for judicial procedures for 16 purging a person's involuntary hospitalization information received by the center for the 17 purpose of the National Instant Criminal Background Check System under certain 18 circumstances; to change provisions relating to the retention of a person's involuntary

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19 hospitalization information; to amend Title 37 of the Official Code of Georgia Annotated, 20 relating to mental health, so as to require judicial notification to certain persons admitted to 21 certain facilities of certain firearm prohibitions that attach to such admission; to provide for 22 retention of jurisdiction; to amend Title 38 of the Official Code of Georgia Annotated, 23 relating to military, emergency management, and veterans affairs, so as to provide for 24 prohibited actions by government official or employee during declared state of emergency; 25 to provide limits upon the emergency powers of the Governor; to provide for civil remedy; to provide for related matters; to repeal conflicting laws; and for other purposes. 26

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1. 28 29 Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against 30 public order and safety, is amended in Code Section 16-11-127, relating to carrying weapons 31 in unauthorized locations, by revising subsection (a), paragraph (4) of subsection (b), and 32 subsection (e) as follows: 33 "(a) As used in this Code section, the term: 34 (1) 'Courthouse' means a building occupied by judicial courts and containing rooms in 35 which judicial proceedings are held. 36 (2) 'Government building' means: 37 (A) The building in which a government entity is housed; 38 (B) The building where a government entity meets in its official capacity; provided, 39 however, that if such building is not a publicly owned building, such building shall be 40 considered a government building for the purposes of this Code section only during the 41 time such government entity is meeting at such building; or 42 (C) The portion of any building that is not a publicly owned building that is occupied 43 by a government entity.

S. B. 259 (SUB) - 2 - 44 (3) 'Government entity' means an office, agency, authority, department, commission,
45 board, body, division, instrumentality, or institution of the state or any county, municipal
46 corporation, consolidated government, or local board of education within this state.

(4) 'Parking facility' means real property owned or leased by a government entity,
courthouse, jail, <u>or</u> prison, <u>or place of worship</u> that has been designated by such
government entity, courthouse, jail, <u>or</u> prison, <u>or place of worship</u> for the parking of
motor vehicles at a government building or at such courthouse, jail, <u>or prison, or place</u>
of worship."

52 "(4) In a place of worship, unless the governing body or authority of the place of worship
 53 permits the carrying of weapons or long guns by license holders <u>Reserved</u>;"

54 ''(e) (1) A license holder shall be authorized to carry a weapon in a government building 55 when the government building is open for business and where ingress into such building 56 is not restricted or screened by security personnel. A license holder who enters or attempts 57 to enter a government building carrying a weapon where ingress is restricted or screened 58 by security personnel shall be guilty of a misdemeanor if at least one member of such 59 security personnel is certified as a peace officer pursuant to Chapter 8 of Title 35; provided, 60 however, that a license holder who immediately exits such building or immediately leaves 61 such location upon notification of his or her failure to clear security due to the carrying of 62 a weapon shall not be guilty of violating this subsection or paragraph (1) of subsection (b) 63 of this Code section. A person who is not a license holder and who attempts to enter a 64 government building carrying a weapon shall be guilty of a misdemeanor.

65 (2) Any license holder who violates subsection (b) of this Code section in a place of
66 worship shall not be arrested but shall be fined not more than \$100.00. Any person who
67 is not a license holder who violates subsection (b) of this Code section in a place of
68 worship shall be punished as for a misdemeanor."

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69	SECTION 2.
70	Said chapter is further amended in Code Section 16-11-129, relating to weapons carry
71	license, gun safety information, temporary renewal permit, mandamus, and verification of
72	license, by adding a new paragraph to subsection (a) and revising subparagraph $(b)(2)(J)$ and
73	subsection (k) as follows:
74	"(4) The judge of the probate court shall be authorized to implement online application
75	processes for weapons carry licenses and renewal licenses. The probate court shall also
76	be authorized to accept a weapons carry license or renewal license application by
77	<u>first-class mail."</u>
78	''(J) Except as provided for in subsection (b.1) of this Code section, any person who has
79	been involuntarily hospitalized as an inpatient in any mental hospital or alcohol or drug
80	treatment center within the five years immediately preceding the application. The judge
81	of the probate court may require any applicant to sign a waiver authorizing any mental
82	hospital or treatment center to inform the judge whether or not the applicant has been
83	an inpatient in any such facility in the last five years and authorizing the superintendent
84	of such facility to make to the judge a recommendation regarding whether the applicant
85	is a threat to the safety of others and whether a license to carry a weapon should be
86	issued. When such a waiver is required by the judge, the applicant shall pay a fee of
87	\$3.00 for reimbursement of the cost of making such a report by the mental health
88	hospital, alcohol or drug treatment center, or the Department of Behavioral Health and
89	Developmental Disabilities, which the judge shall remit to the hospital, center, or
90	department. The judge shall keep any such hospitalization or treatment information
91	confidential. It shall be at the discretion of the judge, considering the circumstances
92	surrounding the hospitalization and the recommendation of the superintendent of the
93	hospital or treatment center where the individual was a patient, to issue the weapons
94	carry license or renewal license;"

95	"(k) Data base prohibition.
96	(1) As used in this subsection, the term 'multijurisdictional' means between or among
97	more than one department, agency, or office.
98	(2) A person or entity shall not create or maintain a multijurisdictional data base of
99	information regarding persons issued or who have applied for weapons carry licenses.
100	(3) Any person aggrieved by a violation of this subsection may bring an action for relief.
101	Such person who proves by a preponderance of the evidence that he or she is or was
102	contained in such a multijurisdictional data base shall be entitled to obtain, in addition to
103	appropriate declaratory or injunctive relief:
104	(A) \$100.00 or actual damages, whichever is greater; and
105	(B) Expenses of litigation, including costs and reasonable attorney's fees."
106	SECTION 3.
107	Said chapter is further amended by revising subsection (e) of Code Section 16-11-173,
108	relating to legislative findings, preemption of local regulation and lawsuits, and exceptions,
109	as follows:
110	"(e)(1) Except as provided for in paragraph (2) of this subsection, nothing Nothing
111	contained in this Code section shall prohibit municipalities, or counties, or consolidated
112	governments, by ordinance or resolution, from reasonably limiting or prohibiting the
113	discharge of firearms within the boundaries of the municipal corporation, or county, or
114	consolidated government.
115	(2) No municipality, county, or consolidated government shall prohibit the discharge of
116	firearms on a parcel of land that is ten acres or more in size provided that the owner or
117	lawful occupants of such land consent to such discharging of firearms. Any such
118	prohibition, by zoning, ordinance, resolution, or any other manner, is preempted."

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SECTION 4.

Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
disposition of property seized, is amended by revising subsection (g) of Code
Section 17-5-54, relating to definitions and disposition of personal property in custody of law
enforcement agency, as follows:

"(g)(1) With respect to unclaimed firearms, if the sheriff, chief of police, agency director,
or designee of such official certifies that a firearm is unsafe because of wear, damage,
age, or modification or because any federal or state law prohibits the sale or distribution
of such firearm, at the discretion of such official, it shall be transferred to the Division of
Forensic Sciences of the Georgia Bureau of Investigation, a municipal or county law
enforcement forensic laboratory for training or experimental purposes, or be destroyed.
Otherwise, an unclaimed firearm:

131 (A) Possessed by a municipal corporation shall be disposed of as provided for in Code 132 Section 36-37-6; provided, however, that municipal corporations shall not have the 133 right to reject any bids or to cancel any proposed sale of such firearms, and all sales 134 shall may be to persons any person, but the transfer of such firearms shall only be to 135 persons, specified by the winning bidders, who are licensed as firearms collectors, 136 dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et 137 seq., and who are authorized to receive such firearms under the terms of such license. 138 The municipal corporation shall dispose of all such firearms at least once every 12 139 months during any time in which the municipal corporation has an inventory of five or 140 more firearms. If a municipal corporation does not dispose of such firearms as required 141 by this Code section, a person interested in acquiring any such firearms may bring an action in mandamus or other legal proceeding to compel the disposition. A person who 142 has been unable to acquire a firearm because of the municipal corporation's failure to 143 144 dispose of the firearm pursuant to this Code section shall, in addition to any other relief 145 to which he or she is entitled, be entitled to actual damages or \$100.00, whichever is

146 greater. A prevailing plaintiff in such an action shall be entitled to his or her costs, 147 including reasonable attorney's fees; or 148 (B) Possessed by the state or a political subdivision other than a municipal corporation, 149 shall be disposed of by sale at public auction. While any person may bid at auction, the transfer of such firearms shall only be to persons, specified by the winning bidders, who 150 are licensed as firearms collectors, dealers, importers, or manufacturers under the 151 152 provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such 153 firearms under the terms of such license. Auctions required by this subparagraph may 154 occur online on a rolling basis or at live events, but in no event shall such auctions 155 occur less frequently than once every 12 months during any time in which the political 156 subdivision or state custodial agency has an inventory of five or more saleable firearms. If the state or a political subdivision other than a municipal corporation does not 157 dispose of such firearms as required by this Code section, a person interested in 158 acquiring any such firearms may bring an action in mandamus or other legal proceeding 159 to compel the disposition. A person who has been unable to acquire a firearm because 160 of the state or such political subdivision's failure to dispose of the firearm pursuant to 161 162 this Code section shall, in addition to any other relief to which he or she is entitled, be 163 entitled to actual damages or \$100.00, whichever is greater. A prevailing plaintiff in 164 such an action shall be entitled to his or her costs, including reasonable attorney's fees. 165 (3) If no bids from eligible recipients are received within six months from when bidding 166 opened on a firearm offered for sale pursuant to paragraph (2) of this subsection, the 167 firearm shall be transferred to the Division of Forensic Sciences of the Georgia Bureau 168 of Investigation, a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed." 169

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SECTION 5.

171 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and 172 dissemination of criminal records to private persons and businesses, resulting responsibility 173 and liability of issuing center, and provision of certain information to the FBI in conjunction 174 with the National Instant Criminal Background Check System, is amended by revising 175 subsection (e) as follows:

"(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal 176 177 history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation or any successor agency for the sole 178 179 purpose of inclusion in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 180 18 U.S.C. Section 921, et seq.; provided, however, that, with respect to involuntary 181 182 hospitalization records, the center shall forward only such information as is necessary to 183 identify such persons.

184 The records of the Georgia Crime Information Center center shall include (2)185 information as to whether a person has been involuntarily hospitalized. Notwithstanding 186 any other provisions of law and in order to carry out the provisions of this Code section 187 and Code Section 16-11-172, the Georgia Crime Information Center center shall be 188 provided such information and no other mental health information from the involuntary 189 hospitalization records of the probate courts concerning persons involuntarily 190 hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges 191 Training Council and the Georgia Bureau of Investigation bureau to preserve the 192 confidentiality of patients' rights in all other respects. Further, notwithstanding any other 193 provisions of law and in order to carry out the provisions of this Code section and Code 194 Section 16-11-172, the center shall be provided information as to whether a person has 195 been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity 196 at the time of the crime, has been involuntarily hospitalized, or both from the records of

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197 the clerks of the superior courts concerning persons involuntarily hospitalized after 198 March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of 199 Georgia and the Georgia Bureau of Investigation bureau to preserve the confidentiality 200 of patients' rights in all other respects. After five years have elapsed from the date that 201 a person's involuntary hospitalization information has been received by the Georgia 202 Crime Information Center, the center shall purge its records of such information as soon 203 as practicable and in any event purge such records within 30 days after the expiration of 204 such five-year period.

205 (2.1)(A) When a person's mental health information has been submitted to the center pursuant to paragraph (2) of this subsection, such person may petition the court in 206 207 which such hospitalization proceedings occurred for relief. A copy of such petition for 208 relief shall be served upon the opposing civil party or the prosecuting attorney, as the case may be, who appeared in the underlying case or their successors. Within 60 days 209 210 of the receipt of such petition, such court shall hold a hearing on such petition; 211 provided, however, that such time period may be extended for good cause as 212 determined by the court. The prosecuting attorney may represent the interests of the 213 state at such hearing.

(B) At the hearing provided for under this paragraph, the court shall receive and
 consider evidence concerning:

- (i) The circumstances which caused the petitioner's hospitalization and resulting
 firearm disabilities from which relief is sought;
- 218 (ii) The petitioner's mental health and criminal history records, if any. The court
- 219 shall require the petitioner to sign a waiver authorizing the custodian of the records
- 220 of any hospital where such petitioner received mental health treatment during such
- 221 hospitalization or any other facility or outpatient treatment center where he or she has
- 222 received mental health treatment since such hospitalization to release such records to

223	the court. The court shall keep such hospitalization and treatment records confidential
224	to the maximum extent possible;
225	(iii) The petitioner's reputation, which shall be developed at a minimum through
226	character witness statements, testimony, or other character evidence; and
227	(iv) Changes in the petitioner's condition or circumstances since the hospitalization
228	relevant to the relief sought.
229	(C)(i) The court shall issue a written order of its decision on such petition filed under
230	this paragraph no later than 30 days after the hearing.
231	(ii) The court shall grant such petition if it finds by a preponderance of the evidence
232	that the petitioner will not likely act in a manner dangerous to public safety and that
233	granting the relief will not be contrary to the public interest.
234	(iii) If the court grants such petition, the clerk of court shall report such order to the
235	center immediately, but in no case later than ten days after the date of such order, and
236	the center shall purge and remove such record that is the subject of the order from any
237	data base which the center makes available to the National Instant Criminal
238	Background Check System and notify the United States Attorney General that the
239	basis for such record being made available no longer is applicable, as soon as
240	practicable but not later than 30 days after receipt of such order.
241	(iv) No person shall file a petition for relief within one year of the date of the final
242	order on a previous petition for relief for such person.
243	(2.2)(A) A record shall be kept of hearings conducted pursuant to paragraph (2.1) of
244	this subsection. Such record shall be exempt from disclosure under Article 4 of
245	Chapter 18 of Title 50.
246	(B) Any appeal of the court's ruling filed pursuant to paragraph (2.1) of this subsection
247	shall be as provided for by the laws governing the appeal of decisions from such court;
248	provided, however, that, notwithstanding Code Section 5-3-2, any such appeal from a

- probate court, as defined in Code Section 15-9-120, shall be a de novo investigation by
 the superior court.
- (C) Information received by a prosecuting attorney pursuant to paragraph (2.1) of this
 subsection shall not be used against the person who is the subject of the petition in any
 other case or context unless such information is obtained in such other case or context
- 254 <u>by other rules of evidence or discovery.</u>
- 255 (3)(A) The records of the center shall include information as to whether a person has 256 been involuntarily hospitalized. In order to carry out the provisions of Code 257 Section 16-11-129, the center shall be provided such information and no other mental 258 health information from the records of the probate and superior courts ordering persons 259 to be involuntarily hospitalized. With respect to probate court records, such information shall be provided in a manner agreed upon by the Probate Judges Training 260 261 Council and the bureau. With respect to superior court records, such information shall be provided in a manner agreed upon by The Council of Superior Court Clerks of 262 263 Georgia and the bureau. Such records shall be provided in a manner so as to preserve 264 the confidentiality of patients' rights in all other respects.
- (B) In order to carry out the provisions of Code Section 16-11-129, the center shall be
 provided information as to whether a person has been adjudicated mentally incompetent
 to stand trial or has been found not guilty by reason of insanity at the time of the crime.
 The clerk of court shall report such information to the center immediately but in no case
 later than ten days after such adjudication of mental incompetence or finding of not
 guilty by reason of insanity."
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SECTION 6.

Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in
Code Section 37-3-62, relating to hearing on petition for court ordered evaluation, recipients
of hearing notice, appointment of representatives, contents of notice, patient's right to

counsel, waiver of hearing, and procedure upon issuance of order for evaluation, by revisingsubsection (b) as follows:

277 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the evidence, if the court is satisfied that immediate evaluation is necessary, the court shall 278 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility 279 280 designated by the department to admit persons ordered by that court to be evaluated. The 281 court shall provide notification to any person admitted to a facility under this subsection 282 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such admission. The court shall retain jurisdiction of the case for purposes of Code 283 Section 35-3-34." 284

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SECTION 7.

Said title is further amended in Code Section 37-7-62, relating to hearing on petition for court
ordered evaluation, notice, appointment of representatives, patient's right to counsel, waiver
of hearing by patient, and procedure upon issuance of order for evaluation, by revising
subsection (b) as follows:

290 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the 291 evidence. if the court is satisfied that immediate evaluation is necessary, the court shall 292 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility 293 designated by the department to admit persons ordered by that court to be evaluated. The 294 court shall provide notification to any person admitted to a facility under this subsection 295 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such 296 admission. The court shall retain jurisdiction of the case for purposes of Code Section 35-3-34." 297

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298 **SECTION 8.** 299 Title 38 of the Official Code of Georgia Annotated, relating to military, emergency 300 management, and veterans affairs, is amended by revising Code Section 38-3-37, relating to 301 prohibited actions by government official or employee during declared state of emergency, as follows: 302 303 "38-3-37. 304 (a) As used in this Code section, the term: 305 (1) 'Firearm' means any handgun, rifle, shotgun, or similar device or weapon which will 306 or can be converted to expel a projectile by the action of an explosive or electrical charge. 307 'License holder' shall have the same meaning as set forth in Code (2)308 Section 16-11-125.1. 309 (3) 'Weapon' shall have the same meaning as set forth in Code Section $\frac{16-11-125.1}{16-11-125.1}$ 310 <u>16-11-127.1</u>. 311 (b) No official or employee of the state or any political subdivision thereof, member of the 312 National Guard in the service of the state, or any person operating pursuant to or under 313 color of state law, while acting during or pursuant to a declared state of emergency, shall: 314 (1) Temporarily or permanently seize, Seize or authorize the seizure of, any firearm, or 315 ammunition or any component thereof, ammunition reloading equipment and supplies, 316 or weapon, the possession of which was not prohibited by law at the time immediately 317 prior to the declaration of a state of emergency, and other than as provided by the 318 criminal or forfeiture laws of this state; 319 (2) Prohibit possession of any firearm, or ammunition or any component thereof, 320 ammunition reloading equipment and supplies, or weapon, or promulgate any rule, 321 regulation, or order prohibiting possession of any firearm or ammunition or any 322 component thereof if such if possession was not otherwise prohibited by law at the time 323 immediately prior to the declaration of a state of emergency;

- 324 (3) Prohibit any license holder from carrying any weapon or promulgate any rule,
 325 regulation, or order prohibiting such carrying if such carrying was not otherwise
 326 prohibited by law at the time immediately prior to the declaration of a state of emergency;
 327 or
- 328 (4) Prohibit the manufacture, sale, or transfer of any firearm, ammunition or any
 329 component thereof, ammunition reloading equipment and supplies, or weapon, or
 330 promulgate any rule, regulation, or order prohibiting the manufacture, sale, or transfer of
 331 such if the manufacture, sale, or transfer was not otherwise prohibited by law at the time
 332 immediately prior to the declaration of a state of emergency;
- 333 (5) Suspend or revoke any weapons carry license issued pursuant to Code
 334 Section 16-11-129, except as authorized by such Code section;
- 335 (6) Refuse to accept an application for a weapons carry license which has been properly
- 336 <u>submitted in accordance with Code Section 16-11-129 if the building or courthouse is</u>
- 337 <u>otherwise open to the public; provided, however, that no probate judge shall be</u>
 338 <u>responsible for any delay or closure caused by circumstances or actions outside of the</u>
- 339 <u>control of such probate judge;</u>
- 340 (7) Close or limit the operational hours of or place any other restrictions upon any
 341 business engaged in the lawful manufacture, sale, or repair of firearms, ammunition or
- 342 any component thereof, ammunition reloading equipment and supplies, or weapons
- 343 <u>unless closure, limitation upon hours, or other restrictions have been required of all</u>
- 344 <u>businesses within the jurisdiction;</u>
- 345 (8) Close or limit the operational hours of any lawful indoor or outdoor shooting range
- 346 <u>unless closure or limitation upon hours has been required of all businesses within the</u>
- 347 jurisdiction; or
- (4)(9) Require the registration of any firearm.
- 349 (c) Any individual who is a lawful resident of the United States, is authorized to possess
- 350 <u>a firearm under the laws of this state, and is or has been subject to an act, rule, regulation,</u>

351 <u>or order in violation of</u>	of this Code section may	y bring an action in i	mandamus or other legal
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352 proceeding against a public entity or public officer in his or her official capacity to obtain

- 353 declaratory or injunctive relief. A prevailing plaintiff in such action shall be entitled to
- 354 recover his or her costs in such action, including reasonable attorney's fees."

355	SECTION 9.
356	Said title is further amended in Code Section 38-3-51, relating to emergency powers of
357	Governor, termination of emergency, limitations in energy emergency, and immunity, by
358	revising paragraph (1) of subsection (d) as follows:
359	"(1) Suspend any regulatory statute, other than Code Section 38-3-37, prescribing the
360	procedures for conduct of state business, or the orders, rules, or regulations of any state
361	agency, if strict compliance with any statute, order, rule, or regulation would in any way
362	prevent, hinder, or delay necessary action in coping with the emergency or disaster;"

363 **SECTION 10.**

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