



May 24, 2013

A Business Guide to Alabama's New Gun Law

On May 22, 2013, Alabama Governor signed Senate Bill 286, the omnibus gun bill originally introduced by Senator Scott Beason. The bill became Act 2013-283 and will become effective on August 1, 2013.

The bill prohibits businesses from restricting the possession and carrying of firearms onto the business's property in certain instances. Essentially, the restrictions can be broken down into three categories:

- 1) Businesses generally open to the public but with full-time security and some form of physical barrier to entry, such as a turnstile;
- 2) Businesses open to the public without full-time posted security and a barrier; and
- 3) Employers that own and operate a parking lot for their employees.

Additionally, the bill includes an immunity provision that is designed to protect businesses from lawsuits that result from harm caused when an employee brings a weapon onto the employers' property pursuant to Section 4 of the Act.

As businesses prepare for the implementation of this new law, the following guidelines may be helpful.

A Business with Security Guards and Some Form of Barrier

Section 6 of SB286 sets forth certain places that firearms are always prohibited. For businesses, the relevant language is found in section 6(b). That subsection states that a business may prohibit all persons, including those with a concealed weapons permit, from bringing a firearm into a building if "access of unauthorized persons is limited during normal hours of operation by the continuous posting of guards and the use of other security features, such as metal detectors, key cards, turnstiles or other physical barriers."

Therefore, in order to completely prohibit firearms, the facility must have both continuous posting of guards and some form of barrier that limits public access to the facility. The extent of the required barrier is not clear from the law, but presumably it must be something that a person is required to go through or around to enter the building. It is conceivable that a security guard posted outside an outer door would satisfy this requirement.

Note also that if a business meets these requirements and chooses to prohibit weapons on the property, the owner is required to place a notice that weapons are not permitted at the public entrances to the

premises.

Rules for Businesses Without Security and a Barrier

Prior Alabama law included a provision that prohibited any person from carrying a pistol onto property that he or she did not own. This provision had been called into question, though, and certainly was rarely enforced. SB286 amended this code provision to allow a person to possess a pistol on someone else's property if the person has either a concealed weapons permit or the consent of the owner.

Thus, a business that allows members of the public access to its building may prohibit a person from openly carrying a holstered pistol into the building, but it may not prohibit a person with a concealed weapons permit from carrying his or her concealed pistol into the building.

What constitutes the consent of the owner is a matter for debate. Some argued during discussion of the legislation that consent required an affirmative action or statement by the business that weapons were permitted. Others argued that the failure to specifically prohibit weapons should be viewed as implied consent.

A business that seeks to prohibit openly carried holstered pistols in its building therefore may want to consider posting a sign stating that firearms are not permitted on the property. Note again, however, that such a prohibition will not prevent a person with a concealed weapons permit from bringing his or her concealed pistol into the facility.

Rules for Employers that Own and Maintain Employee Parking Lots

Section 4 of Senate Bill 286 relates to weapons that employees may possess in their vehicles located in the parking lots of their employers. First, however, subsection 4(a) makes it clear that an employer **can always** prohibit employees from bringing weapons inside its facility, and can prohibit employees from carrying weapons when the employee is engaged in the employer's work, whether on or off-site.

Subsection 4(b), however, prohibits an employer from restricting an employee from having a firearm that is out of sight and in his or her locked vehicle under certain circumstances.

First, the employee must meet certain eligibility criteria.

If the employee has a valid concealed weapons permit, then the employee is eligible to have either a pistol or any other firearm that is legal for hunting in Alabama (such as a shotgun or rifle) in his or her car.

If the employee does not have a concealed weapons permit, then the employee only is permitted to have an unloaded firearm that is legal for hunting (and not a pistol) out of sight in his or her locked vehicle under the following conditions:

- The employee must have a valid Alabama hunting license;
- It must be during hunting season;
- The employee cannot have been convicted of any crime of violence (as defined in Ala. Code

§13A-11-70), nor any crime involving domestic violence, nor be subject to a domestic violence restraining order;

- The employee cannot have been committed to a psychiatric hospital; and
- The employee cannot have had prior documented incidents of workplace threats or violence.

If an employer reasonably believes that an employee is a risk of danger to themselves or others, the employer may inquire as to whether the employee has a weapon in his or her car. If the employee states that he or she does possess a weapon, the employer may take whatever steps are necessary to determine if the employee is in complete compliance with the law. That includes determining both whether the employee is eligible to have a weapon at work (*see* list above - for example, that he or she has a permit or hunting license, etc.) and whether the weapon was maintained in compliance with the law (*i.e.*, was out of sight and locked in the vehicle).

If the employee was not in compliance with the law, then employer may take disciplinary action against the employee in the employer's discretion.

If the employee is in compliance with the law, the employer may not take any action against the employee that is **solely** based on the presence of the lawful weapon. Similarly, if an employer learns by a means other than inquiry that an employee possesses a weapon that is in compliance with the law, the employer may not take any action against the employee **solely** based on the presence of the lawful weapon.

Note that there may be other permitted reasons to discipline the employee that are unconnected to the possession of a weapon in the employee's car. For example, if a threat of violence against a co-worker led to the discovery of a weapon, the fact that the weapon was maintained in compliance with the law would not prohibit the employer from disciplining the employee for the threat of violence.

An employee terminated **solely** on the basis of the presence of a weapon that is in compliance with this law may bring an action for wrongful termination against the employer. The employee may seek damages for lost wages and other lost remuneration, but the law does not state that the employee may seek reinstatement.

Section 4 specifically does not prohibit an employer from reporting an employee to law enforcement for a threat made, or where there is credible evidence that the employee has broken the law (*e.g.*, if the employer believes that there are illegal narcotics present in the vehicle).

Immunity for Businesses from Civil Liability

Section 5 provides broad-based immunity to employers from civil liability that could result from an employee bringing a weapon onto the property of the employer. Specifically, section 5 states that an employer, and the owner or possessor of the property on which the employer is located (a landlord, for example)

“shall be absolutely immune from any claim, cause of action or lawsuit that may be brought by any person seeking any form of damages that are alleged to arise, directly or indirectly, as a result of any firearm brought onto the property of the employer, owner or lawful possessor by an employee. . .”

Further, Section 5 states that the presence of a weapon on the employer’s property “does not, by itself, constitute a failure by the employer to provide a safe workplace.” Finally, the section provides that an employer does not have any duty to inspect a parking lot, or any privately owned vehicle on a parking lot.

However, employers should be aware that immunity does not extend to the “affirmative wrongful acts” of an employer that cause harm.

Finally, under the new law, a denial of a motion to dismiss by the trial court on immunity grounds is immediately appealable, and the action in the trial court is automatically stayed pending resolution of the appeal.

CONCLUSION

Businesses and employers with existing policies regarding the presence of firearms on their premises, whether in the facility itself or in the parking lot, will need to carefully examine SB286 and its potential impact. Certain aspects of those policies may need to be revised and publicized in order to ensure maximum effectiveness as businesses work to provide a safer workplace.

For more information about anything discussed in this client alert, please contact:

Clay Ryan	205.254.1108	cryan@maynardcooper.com
Peck Fox	334.420.0793	pfox@mcg-mont.com
Ted Hosp	205.254.1077	thosp@maynardcooper.com

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1901 Sixth Ave. N., Ste. 2400 | Birmingham, AL 35203 | 205-254-1000
655 Gallatin Street | Huntsville, AL 35801 | 256-551-0171
RSA Battle House Tower | 11 N. Water Street, Ste. 27000 | Mobile, AL 36602 | 251-432-0001
RSA Union Building | 100 N. Union Street, Ste. 650 | Montgomery, AL 36104 | 334-262-2001
www.maynardcooper.com

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