

# Clarifying Your Rights Under the New Georgia Gun Law

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# Objectives

- **Learn about the background of the Safe Carry Protection Act**
- **Understand what it means to Opt-Out**
- **Understand the impact on Parking Lots**
- **Learn whether there is potential liability under the Law**
- **Action Plan**



# Overview of the New Law

## Safe Carry Protection Act

- **Effective July 1, 2014**
- **Amends the Business Security and Employee Privacy Act of 2008**
- **Significant changes that affect bars and restaurants**



# Background

## According to Law Center to Prevent Gun Violence

- Georgia is one of only about 13 states to allow weapons in bars and restaurants
- Strong opinions exist on each side of the debate
- Rights and obligations as a bar/restaurant owner



# **The 2008 Law that Changed the Landscape**

**In 2008, Georgia passed the Business Security and Employee Privacy Act.**

**Limited property owners' rights to:**

- **Maintain or enforce certain policies banning concealed weapons from their property**
- **Search locked privately owned vehicles of employees or invited guests**
- **Prohibited individuals from carrying weapons at “public gatherings”**



# The 2008 Law's Impact on Restaurants and Bars

**“Public gatherings” included:**

**Establishments at which alcoholic beverages are sold and which derive less than 50% of their total annual gross food and beverage sales from the sale of prepaid meals or food**

**Also made it a misdemeanor for a person licensed or permitted to carry a firearm to consume alcoholic beverages in a restaurant or other eating establishments while carrying a firearm**



# 2010 Governor Perdue Signed a Bill

- Expanded the areas in which individuals may lawfully carry weapons
- Those not prohibited by law may carry a weapon without a valid license:
  - Home or own property
  - Inside his or her place of business
  - Inside a passenger motor vehicle – unless prohibited by owner/leaseholder
- Individuals with a valid carry license may carry a weapon in every location in the state that is not a:
  - Government building
  - Courthouse
  - Jail or prison
  - Place of worship
  - Mental health facility
  - Bar
  - Nuclear power facility
  - Polling place



# 2010 Governor Perdue Signed a Bill

- **Presumption that weapons could not be carried into bars**  
Bars are establishments that were devoted to serving alcoholic beverages and serving food was only incidental to the consumption of alcoholic beverages (e.g., taverns, nightclubs, cocktail lounges, and cabarets)
- **Deleted prohibition on consuming alcohol while carrying a firearm**





# 2014 Safe Carry Protection Act

- **New Presumption: Patrons and employees CAN carry weapons into bars/restaurants**
- **Onus is now on the bar/restaurant to take affirmative steps to prohibit weapons**



# What Weapons are Covered

## Hand Gun

A firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged by an action of an explosive where the length of the barrel, not including any revolving, detachable, or magazine breech, does not exceed 12 inches; provided, however, that the term "handgun" shall not include a gun which discharges a single shot of .46 centimeters or less in diameter



# What Weapons are Covered

## Long Gun

A firearm with a barrel length of at least 18 inches and overall length of at least 26 inches designed or made and intended to be fired from the shoulder



## Knife

Blade longer than 5 inches and attached to a handle

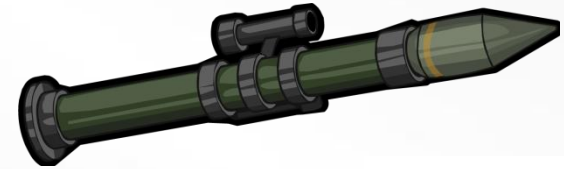


# Weapons that are not Covered

## Georgia Firearms Weapons Act

Prohibits possession of:

- Sawed-off shotgun and rifles
- Silencers
- Rocket launchers
- Bazookas
- Mortars
- Hand grenades



# Factors to Consider in Whether to Ban Weapons

- Whether it will discourage customers from patronizing your facility
- The potential for there to be firearms and individuals consuming alcohol
- The potential for liability if violence occurs on the premises
- If it is an employee, potential liability for negligence claims



# **Bars/Restaurants that Want to Opt-Out**

**If you do not want weapons on the premises, you must “opt-out”**

- **Still have the right to decide as private property owners whether to allow weapons**
- **Must take affirmative steps to ban them if that is the decision**
- **The right belongs to the owner or person in legal control of the private property through a lease, rental agreement, licensing agreement, contract or any other agreement to control access to the property**



# How Do You Opt-Out?

- Provide notice to patrons and employees that weapons are banned
- Law does not define what is sufficient notice
- Look to other state statutes for guidance



# Notice that Weapons are Banned

- **Decide which weapons to ban**
- **Post notice in a conspicuous location**
- **Post it at each entryway**
- **Consider a bilingual posting**
- **Consider a posting that has the universal sign for “No Firearms”**





# Example of a Posting



# **Patrons Carrying a Handgun Without a Valid Permit**

- **First offense – misdemeanor and fines may be issued**
- **Second offense within 5 years (measured from arrest date) – felony and imprisonment of not less than two years and not more than 5 years**
- **It does not give rise to a civil action for damages**



# License to Carry a Weapon

- Requirement that patrons carry their license
- Or carry proof of his/her exemption from requirements of a license
- Cannot be detained solely to investigate whether they have a permit



# Notice to Employees that Weapons are Banned

- **Implement a Workplace Violence Policy**
  - **Specific ban on weapons**
  - **Decide which weapons to ban**
- **Disseminate the policy to employees**
- **Consider whether to communicate it to vendors and others**



# **No Change in Current Law Concerning Parking Lots**

**Without a carry license, Georgia gun owners:**

- **Cannot take handguns out into the community**
- **Can possess guns on their own property**
- **Can possess guns inside their homes**
- **Can possess guns inside their motor vehicles**
- **Can possess guns in their place of business**

**As a result, both licensed and unlicensed gun owners can  
carry guns in their private passenger motor vehicles  
onto your parking lot**



# Parking Lot Law

- **The law does not apply to other types of dangerous objects**
- **Must be in a locked compartment out of sight**
- **Limitation on right to carry if employer provides employees with:**
  - **A secure parking area;**
  - **Restricted from general public access; and**
  - **Employer's policy allowing for vehicle searches upon entry is applied on a uniform and frequent basis**



# Parking Lot Notice Example



# Employer with an Unsecure Parking Lot

Can still search a vehicle if:

- Vehicle is owned or leased by employer
- A reasonable person would believe that accessing a locked vehicle is necessary to prevent an immediate threat to human life or safety
- It is incident to an employee's consent to search his/her locked privately owned vehicle by licensed security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property





# Limitations on Employers

- **Cannot condition employment on agreement by employee not to transport firearm to work**
- **Can prohibit employees who have been disciplined or have discipline pending**
- **No private right of action**
- **Action for violation of law must be brought by the Attorney General**



# Bar/Restaurant Liability

**Not liable for damages (criminal or civil) resulting from or arising out of:**

- **Transportation**
- **Storage**
- **Possession, or**
- **Use of a firearm**



# Bar/Restaurant Liability

## Exceptions

- **Employer commits a criminal act involving the use of a firearm**
- **Employer knew that the person using the firearm would commit such a criminal act on the employer's premises**



# Bar/Restaurant Liability

- **No new duty is created by this code section**
- **No obligation to implement additional security measures**
- **If an action is brought for criminal use of a firearm, plaintiff must pay the attorney's fees if the property owner/employer prevails**



# **Limitations on Serving Alcohol to a Patron Carrying a Weapon**

**The law does not prohibit:**

- **A bar/restaurant from serving alcohol**
- **A patron carrying a gun from consuming alcohol**

**Law prohibits:**

- **Patron from discharging a weapon while under the influence of alcohol or drugs (including prescription drugs)**



# Action Plan: What You Need to Do

- **Decide whether to opt-out**
- **If opt-out, publish a notice at every entrance**
- **Update employee policies regarding weapons on the premises**
- **Review insurance policies**
- **Conduct training**
- **Establish protocol to follow when someone enters the premises with a weapon**
- **Consistently enforce your no weapons policy if you have one**



# Speaker Information

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Alisa Cleek has spent more than 18 years representing business owners in the restaurant industry and currently serves as Chair of Elarbee Thompson's Restaurant Group, a group formed to specifically address the unique legal challenges faced by restaurant and bar owners. Alisa is a member of the Academy of Hospitality Industry Attorneys, a nationwide group of attorneys dedicated to promoting education and improved communication as well as legal services to the hospitality industry. Alisa regularly contributes to the Georgia Restaurant Association's Legal Knowledge Center Blog, and frequently contributes restaurant-related articles published in Restaurant Startup & Growth Magazine. Alisa is a past Board Member of the Society for Human Resources Management - Atlanta, and works diligently in defending, educating, and training restaurant owners in day-to-day and long-term decisions. Alisa's most recent focus has been defending restaurants in such matters as collective actions and wage and hour litigation.

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Tracy focuses her practice on successfully defending employers, including restaurants, against claims involving workplace discrimination, wage and hour disputes, and various other federal and state law claims. As a former police officer and detective, Tracy is a skilled interviewer and regularly assists both public and private employers with conducting workplace investigations and provides advice on daily personnel matters, policies, and discipline. She also spends a significant amount of time training managers and human resources personnel on employment related matters and her work has been published by a variety of organizations, including Georgia Restaurant Association's online Legal Knowledge Center and Restaurant Startup and Growth magazine.





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