

COUNTY GOVERNMENT AND THE NEW "GUN" LAW

Guns in County Buildings

Act 2013-283 includes a specific provision prohibiting firearms in certain buildings without the express permission of the person or entity with authority over the premises – even if the person has a valid permit. Under Section 6(a), this exclusion applies to the following locations, which includes most county buildings:

- Inside the building of the police, sheriff, or highway patrol station
- Inside or on the premises of a prison, jail, halfway house, community corrections facility, or other detention facility for those who have been charged with or convicted of a criminal or juvenile offense
- Inside or on the premises of a facility which provides inpatient or custodial care of those with psychiatric, mental, or emotional disorders
- Inside a courthouse or courthouse annex
- Inside a building where the District Attorney's Office is located or
- Inside a building in which a county commission or city council is currently having a regularly scheduled or specially called meeting

The provision providing that firearms are prohibited in a courthouse annex is significant, since many buildings owned by the county commission have (or can have) that designation.

Section 6(a) provides some authority for prohibiting firearms inside any facility hosting an athletic event sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education. However, this prohibition does not apply to a person who has a valid gun permit, making this provision significantly limited.

Section 6(b) also allows for prohibiting firearms inside any building or facility to which access of unauthorized persons or prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features, including but not limited to magnetometers, key cards, biometric screening devices, or turnstiles or other physical barriers.

- The proper interpretation of this section is the subject of much debate at present
- Many businesses are using this provision as a means to prohibit firearms with very limited security in place

Section 6 requires that buildings prohibiting firearms as authorized in this section must have a notice placed at all public entrances of the buildings alerting those entering that firearms are prohibited.

- The law does not specify what the notice should say but it should clearly notify all persons that firearms will not be allowed in the building (or where applicable, on the premises)
- And the notice should be prominently displayed to be seen by all persons attempting to enter the building or premises

Rights and Duties of Employer

Under **Section 4 of Act 2013-283**, an employer is authorized to prohibit employees from carrying firearms while on the employer's property and while engaged in work duties. This would certainly apply to the county commission as an employer.

Firearms allowed in employees' vehicle

However, **Section 4(b)** sets out several conditions under which an employee can keep a firearm in a legally parked vehicle on the employer's property if it is kept from ordinary view and is locked in a container.

- The employee has a valid concealed weapon permit
- The employee has a valid Alabama hunting license during hunting season and the weapon is for use in hunting
- The employee has never been convicted of a crime of violence or one not subject to a domestic violence order
- The employee does not have any of the mental illness conditions that would justify denying a pistol permit
- The employee has no documented workplace incidents involving the threat of physical injury or which resulted in physical injury

Employee at risk to self or others

Section 4(c) provides that if an employer believes an employee presents a risk of harm to self or others, the employer may ask if the employee possesses a firearm in his or her private motor vehicle.

If the employee does have a firearm in his or her vehicle, the employer may make necessary inquiries to establish whether the employee is in compliance with *Section 4(b)* as set out above.

- If the employee is not in compliance, the employer may take adverse employment action against the employee
- If the employee has been in compliance at all times, the employer may not take adverse employment action against the employee based solely on the presence of the firearm

Reporting complaints to law enforcement

Section 4(e) provides that an employer may report to law enforcement a complaint based upon information and belief that there is credible evidence that:

- The employee's motor vehicle contains a firearm prohibited by state or federal law or contains stolen property or a prohibited or illegal item other than a firearm
- The employee has made a threat to cause bodily harm to selves or others

Taking action against employee

If law enforcement officers discover either a firearm prohibited by state or federal law, stolen property, or a prohibited or illegal item other than a firearm, the employer may take adverse employment action against the employee.

However, if any adverse employment action is taken against an employee who has fully complied with the requirements of *Section 4(b)* and does not possess a firearm prohibited by state or federal law, that employee is entitled to recover any of the following:

- Compensation for lost wages or benefits
- Compensation for other lost remuneration caused by the adverse action

If an employee's demand for recovery has not been satisfied within 45 calendar days, the employee may file a civil action against the employer.

Employer Protection against Liability

While *Act 2013-283* grants significant rights to the gun owner, it also provides significant protections to the employer or owner of the “property on which the employer is situated”.

Section 5(a) of the Act states that, except for the recovery allowed to an employee in compliance with Section 4:

[A]n employer and the owner and/or lawful possessor of the property on which the employer is situated 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, including a firearm that is transported in an employee's privately owned motor vehicle.

Additionally, *Section 5* provides that the presence of a firearm or ammunition on an employer's property does not, by itself, constitute the failure of the employer to provide a safe workplace and specifically provides that a public or private employer (or a principal, officer, director, employee, or agent) does not have a duty:

- (1) To patrol, inspect, or secure:
 - a. Any parking area provided for employees or
 - b. Any privately owned motor vehicle located in a parking area the employer provides for employees or
- (2) To investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Section 5 does provide that this section shall not be construed to provide immunity from liability to an employer, business entity or property owner for his or her own affirmative wrongful acts that cause harm, damage or injury to another.

Regulation of Guns Controlled by Legislature

Section 7 of Act 2013-283 takes great pains to ensure that only the Alabama Legislature will control the regulation and policy pertaining to firearms, ammunition, and firearm accessories. The Act states that this is “to ensure that such regulation and policy is applied uniformly throughout this state to each person subject to the state's jurisdiction and to ensure protection of the right to keep and bear arms recognized by the Constitutions of the State of Alabama and the United States.”

In order to accomplish this objective, the new law provides that the Legislature “preempts the entire field of regulation in this state touching in any way upon firearms, ammunition, and firearm accessories to the complete exclusion of any order, ordinance, or rule promulgated or enforced by any political subdivision of this state.”

Section 7(d) states that “The authority of a political subdivision to regulate firearms, ammunition, or firearm accessories shall not be inferred from its proprietary authority, home rule status, or any other inherent or general power.”

And under **Section 7(e)**, “Any existing orders, ordinances, or rules promulgated or enforced contrary to the terms of this section are null and void and any future order, ordinance, or rules shall comply with this section.”

A person adversely affected by any order, ordinance, or rule promulgated in violation of **Section 7** may file a petition with the Attorney General requesting that he or she bring an action in circuit court for declarative and injunctive relief.

- If the Attorney General determines there is reasonable cause to proceed with an action, he or she shall provide the political subdivision or public official enacting the order, ordinance, or rule 60 days' notice of his or her intent to file an action
- Upon the expiration of the 60 days' notice, the Attorney General may file the suit
- If the Attorney General determines that there is no reasonable cause to proceed with an action, he or she shall publicly state in writing the justification for the determination not to file suit
- The Attorney General must act within 90 days of receipt of the petition

The court may award reimbursement for actual and reasonable expenses to a person adversely affected if an action under this subsection results in a final determination in favor of the person adversely affected.

Section 7 is not intended to prevent any of the following activities:

- (1) A law enforcement agency promulgating and enforcing rules pertaining to firearms, ammunition, or firearm accessories issued in the course of their official duties.
- (2) An employer regulating or prohibiting an employee's carrying or possession of firearms, firearm accessories, or ammunition in the course of the employee's official duties.
- (3) A prosecutor, court or administrative law judge hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(4) The enactment or enforcement of a generally applicable zoning or business ordinance that includes firearms businesses along with other businesses, provided that an ordinance designed or enforced effectively to restrict or prohibit the sale, purchase, transfer, manufacture, or display of firearms, ammunition, or firearm accessories that is otherwise lawful under the laws of this state is in conflict with this section and is void.

(5) A political subdivision enacting and enforcing rules of operation and use for any firearm range owned or operated by the political subdivision.

(6) A political subdivision sponsoring or conducting any firearm-related competition or educational or cultural program and enacting and enforcing rules for participation, provided nothing in this section authorizes or permits a political subdivision to offer remuneration for the surrender or transfer of a privately owned firearm as a method of reducing the number of privately owned firearms within the political subdivision.

(7) Any official of a political subdivision, a sheriff, or other law enforcement officer with appropriate authority and jurisdiction enforcing any law enacted by the Legislature.

(8) A sheriff of a county acting on an application for a gun permit.

(9) A political subdivision leasing public property to another person or entity for a gun show or other firearm-related event on terms agreeable to both parties.

(10) The adoption or enforcement of county or municipality ordinances making violation of a state firearm law a violation of an ordinance.

(11) A municipality regulating the discharge of firearms within the limits of the municipality or a county from exercising any authority it has under law, to regulate the discharge of firearms within the jurisdiction of the county.

(12) A county or a municipality exercising any authority it has to assess, enforce, and collect generally applicable sales taxes, use taxes, and gross receipts taxes on the retail sale of firearms, ammunition, and firearm accessories along with other goods, provided that no such tax imposed by a county or municipality may apply at a higher rate to firearms, ammunition, or firearm accessories than the general sales tax rate of the jurisdiction.