

Legal Briefing

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House Bill 89 – Georgia’s “Gun Law”

I have recently looked at HB 89 in a fair amount of detail, along with some of the commentaries and articles about it and the evolution of amendments during its meandering through the legislature this last session, and it is not abundantly clear what the intent or meaning of this Bill (now statute) is as to application to a construction site. During the debates during the session, this Bill did not attract the attention of the construction industry, since it was assumed by many that the Chamber of Commerce and other business interests were paying close attention. However, most of the attention and publicity centered upon the provisions dealing with the right to carry concealed weapons, if properly permitted, into parks, public buildings historic sites, and other "public gatherings" and not with the meaning of the entirely new provisions dealing with the rights of an owner, employer, or contractor to restrict or control guns in vehicles. Virtually no analysis has been done to my knowledge on these issues.

It does not appear that the provision of the law, as amended, would limit or bar a general contractor from imposing reasonable rules or policies barring weapons on a construction project site, including in private vehicles in on-site parking areas with a few qualifications outlined below.

Bottom line, while it is not as clear as we would prefer in the new statutory language, based upon the right to "control access" to construction project site parking areas, there seems to be no provisions clearly limiting or precluding imposition and application by a general contractor of a restriction or bar against carrying weapons on a private contraction project site. Thus, it would appear that a general contractor in contractual charge of a construction site (and more certainly the owner of the property) has the right to "control access" to the site, including precluding anyone, whether its employees or invitees from bringing weapons onto the site, concealed or not, licensed or not, or in vehicles or not. Finally, even if such imposition of any such reasonable restrictions by a contractor were later determined to be precluded by this statute, the sanctions or liabilities – the “downside” - would likely not be severe and would be offset by the “upside.”

The following is further discussion about the Bill, as well as a detailed analysis of the relevant provisions:

Additional Discussion of House Bill 89

The provisions garnering the most attention and publicity involve those which seek to clarify, decriminalize and permit the carrying of concealed weapons, including in private vehicles, by one properly licensed to do so onto such properties such as public parks, public buildings, historic sites, recreational areas, wildlife management areas and other "public gatherings" (now defined to include “athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or

establishments at which alcoholic beverages are sold for consumption on the premises and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food” and “public transportation”).

In application to a construction project site regard, there is little guidance in the history of this Bill to offer much guidance and there has been little attention paid to such issues to date. In this regard, however, a newly added provision affirmatively states that "(n)othing in this Code section shall restrict the rights of *private property owners or persons in legal control of property* through a lease, a rental agreement, *a contract, or any other agreement to control access to such property*". (Emphasis added). This expansive right of an property owner or person “in legal control” of real property to “control access” trumps any less expansive rights or limitations of an “employer” (discussed below) to impose certain restrictions on an employee or other person on the employer’s property. The apparent intent and import of this provision is to permit such an owner or person “in legal control” of private real property to exercise such control of “access” to the property by precluding persons coming on the site with weapons of any kind, concealed or not. This would seemingly include a general contractor in control of the construction project site per the contract with the owner – for example: under both the ConsensusDOCS 200 and the AIA A201 general conditions the general contractor is responsible for all safety precautions and programs and charged with the right and obligation to take reasonable precautions and promulgate safety regulations for the safety of employees and others affected thereby and reasonable safeguards for safety of all persons on the site.

Could it have been clearer in extending the affirmative grant of such right to a general contractor regarding a construction site? Certainly. But the generalized grant of authority to “control access” would appear to suffice, coupled with the fact that there is no other provision which expressly and clearly purports to preclude such exercise of control of “access” by a general contractor who is contractually obliged and authorized to control access to a construction site.

Another added provision to the law seeks to limit and define the extent to which a “private or public *employer*” can control, limit or preclude carrying of weapons, concealed or otherwise. Conduct specifically precluded is rather limited, extending only to (1) establishing, maintaining or enforcing “any policy or rule that has the effect of *allowing * * * search [of] the locked privately owned vehicles of employees or invited guests on the employer’s parking lot*” and (2) “[C]ondition[ing] employment upon any agreement by a *prospective employee that prohibits an employee [having a license to carry a concealed weapon] from entering the parking lot and access thereto when the employee’s privately owned motor vehicle contains a [concealed] firearm.*” While the proscription regarding search of a vehicle applies to “employees or *invited guests*” of an “employer” is potentially broad enough to encompass a general contractor and its employees, as well as those of its subcontractors as invited guests, the broader right to “control access” discussed above shall override and govern. Furthermore, there is explicitly no limitation on an “employer’s” right to provide “*applicable employees with a secure parking area [including presumably but not explicitly the right to bar concealed*

weapons in such area”] provided that the employer “restricts general public access through the use of a gate, security station, security officers, or other similar means which limit public access into the parking area” and that any such policy including “allowing vehicle searches upon entry shall be applicable to all vehicles entering the property and applied on a uniform and frequent basis”. Again, however, it appears the statutory purpose and intention to allow the more limited rights of an “employer” to defer to the broader rights of a property owner or one in control of property, as discussed above, to “control access” – presumably by restricting or barring weapons.

Detailed Analysis of the Relevant Provisions

1. As amended, OCGA 16-11-126 dealing with definition of criminal offense by a person carrying a concealed weapon clarifies and expands the rights of a person holding a valid license to carry a concealed weapon in stating that such [person "shall be permitted to carry such weapon, subject to the limitations of this part, in all parks, historic sites, or recreational areas * * * and in all wildlife management areas.” (Subsection 126(c)). And, further, the preexisting law stated that the Code section "shall not forbid the transportation of any firearm by a person * * * , provided the firearm is enclosed in a case, unloaded, and separated from its ammunition. (Subsection 126(d)). Finally the preexisting language makes clear that such person shall not be forbidden "from transporting a loaded firearm in any private motor vehicle." (Subsection 126(e)). While it does not superficially address rights of a contractor to control carrying weapons of any kind, concealed or not, on a construction site, it does make clear that when properly licenses to do so, it would not be illegal for a person to carry such a weapon, including in his or her vehicle.

2. As amended, OCGA 16-11-127 , again dealing with defining and limiting criminal sanctions for carrying weapons, provides that “a person ~~is~~ shall be guilty of a misdemeanor when he or she carries to or while at a public gathering any * * * firearm * * * designed for the purpose of offense and defense. (Subsection 127 (a)). Further it provides that "[f]or the purpose of this Code section, 'public gathering' shall include, but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food. Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to carry such firearm by this part.” (Subsection 127(b)). However, an entirely new subpart now provides that: "[a] person licensed or permitted to carry a (concealed) firearm by this part shall be permitted to carry such firearm, subject to the limitations of this part, in all parks, historic sites, and recreational areas, including all publicly owned buildings located in such parks, historic sites, and recreational areas and in wildlife management areas * * * , in wildlife management areas * * * , and in public transportation * * * ; provided, however, that a person shall not carry a firearm into a place prohibited by federal law.” (Subsection 127(e)). As with OCGA 16-11-126, this does not specifically address rights of a contractor to control carrying weapons of any kind, concealed or not, on a construction

site that falls within one of these categories, it does make clear that when properly licenses to do so, it would not be illegal for a person to carry such a weapon, including in his or her vehicle.

3. The most confusing, ambiguous and troubling portions of the new law is the entirely new subpart OCGA 16-11-135, which states in pertinent part that except as otherwise provided, no private or public employer, including the state and its subdivisions, shall:

(1) “[E]stablish, maintain, or enforce any policy or rule that has the effect of allowing such employer or its agents to search the locked privately owned vehicles of employees or invited guests on the employer’s parking lot and access thereto” (Subsection 135 (a)) (Emphasis added).

(2) “[C]ondition employment upon any agreement by a prospective employee that prohibits an employee from entering the parking lot and access thereto when the employee’s privately owned motor vehicle contains a firearm that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such privately owned motor vehicle, provided that any applicable employees possess a Georgia firearms license.” (Subsection 135 (b)) (Emphasis added).

Note that neither of these Subsections purports to restrict the rights of an "employer" to actually prohibit by rule or policy employees from bringing weapons, concealed or otherwise or in vehicles, onto a construction site or parking lot. Additionally, neither provision would limit the rights of a contractor charged with control over a construction site, including on site parking for worker vehicles, to control or limit carrying of such weapons onto the site by the construction workers, whether employed by the contractor or not. Subsection (a) only applies to efforts to "search the locked privately owned vehicle" and Subsection (b) only prohibits conditioning employment upon "agreement of a prospective employee" and not with control of existing employees. And, neither applies to employees of other employers, except as they may be "invitees" (i.e. properly allowed on the site for an employers benefit - e.g. employees of subcontractors, owners, architects, etc.).

Further, while the proscriptions in Subsection (a) apply to "employees or invited guests" of an employer, potentially broad enough to encompass a contractor and its employees as well as those of its subcontractors as invited guests, the limitations in Subsection (b) deals solely only with "employees" of an employer. Additionally the new section provides that Subsection (a) may only be enforced by the Attorney General. Finally, Subsection (a) (but not Subsection (b)) does not apply, among other situations,

- “[t]o vehicles owned or leased by an employer,”

- Where “a reasonable person would believe that accessing a locked vehicle of an employee is *necessary to prevent an immediate threat to human health, life, or safety*” or

- when “an *employee consents to a search of their locked privately owned vehicle* by licensed private security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property.” (Subsection 135 (c) (2) - (4) and (i)) (Emphasis added).

Additionally, under this new provision, Subsections (a) and (b), above, shall not apply:

“(1) To an employer providing applicable employees with a secure parking area which restricts general public access through the use of a gate, security station, security officers, or other similar means which limit public access into the parking area, provided that any employer policy allowing vehicle searches upon entry shall be applicable to all vehicles entering the property and applied on a uniform and frequent basis;

* * *

(3) To facilities *associated with electric generation owned or operated by a public utility;*

(4) To any United States Department of Defense contractor, if such contractor operates any facility on or contiguous with a United States military base or installation or within one mile of an airport;

(5) To an employee who is restricted from carrying or possessing a firearm on the employer’s premises due to a completed or pending disciplinary action;

(6) Where transport of a firearm on the premises of the employer is prohibited by state or federal law or regulation;

(7) To parking lots contiguous to facilities providing natural gas transmission, liquid petroleum transmission, water storage and supply, and law enforcement services determined to be so vital to the State of Georgia, by a written determination of the Georgia Department of Homeland Security, that the incapacity or destruction of such systems and assets would have a debilitating impact on public health or safety; or

(8) To any area used for parking on a temporary basis.”

(Subsection 135 (d)) (Emphasis added). These exceptions would seemingly apply, where applicable, to a parking area maintained for a construction project by a contractor relative to its own employees (and invitees) and may therefore render inapplicable the limitations in Subsection (a) and (b), above, on an "employers" right to limit or restrict activities of its own employees regarding carrying concealed weapons in their own vehicles. Arguably all parking areas for a construction site are maintained "on a temporary basis".

Finally, this new provision allows that "(n)othing in this Code section shall restrict the rights of *private property owners or persons in legal control of property* through a lease, a rental agreement, *a contract, or any other agreement to control access to such property*. When a private property owner or person in legal control of property through a lease, a rental agreement, a contract, or any other agreement *is also an employer, his or her rights as a private property owner or person in legal control of property shall govern*." (Subsection 135(k) (Emphasis Added). While this exception language is quite broad, it is not clear in purpose or intent regarding such person's (which may well include a "contractor" on a construction site) right to "control access to such property." A reasonable reading of this language would include a general contractor contractually empowered and permitted to maintain order and limit access to a construction site, including on site parking. Given the clearer and broader language of Subsections (a) and (b) regarding limitation of an "employer's" right to "search the locked privately owned vehicles" of employees or invitees or to otherwise condition employment by agreement of prospective employees regarding carrying a concealed firearm in the vehicle, the exception language in this Subsection 135(k) relating to controlling "access" could and should have been more specific regarding clearly indicating that the right to

"control access" includes the right to preclude employees, invitees, or independent contractors (and their employees) from carrying weapons, concealed or otherwise including in a private vehicle, on a construction project site. However, unless such effort at "control" of access falls within the limited preclusions of Subsections (a) and (b), above, there is no provision of this law as amended that would limit or preclude the exclusion, by rule, policy or otherwise, of weapons on a construction site by a contractor or owner. Moreover, even if there were such preclusion of an "employer" that applied, this right of a "private property owner or person in legal control of" such property to "control access" (presuming it would include the terms of access) would expressly trump and override any such restriction on an "employer". While OCGA 16-11-126(c) and (d), as amended, have expanded situations in which carrying of a concealed weapon is permitted without exposure to criminal sanction, including carrying of a concealed weapon by a person licensed to do so in "any private passenger motor vehicle," the fact that conduct is not now deemed criminal does not further necessarily entitle a person to carry such weapons onto private property over objection by the owner and does not address whether, when and how a property owner or person in control of such property may restrict access to "private" property. In this regard the law has not changed.