



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

2019 UPDATE
GUN LAWS IN GEORGIA:
CAN A NONPROFIT RESTRICT GUNS ON ITS PROPERTY?

Many nonprofits in Georgia, particularly those that work with vulnerable populations including children, the elderly, and victims of violence, do not permit weapons on their premises. On July 1, 2014, the laws of Georgia changed significantly to further limit one's ability to restrict gun-carrying by licensed gun-holders. These changes may affect nonprofits that currently have such restrictions, particularly those that are located in government buildings or lease property from a municipality, county or the State of Georgia.

The Safe Carry Protection Act (SCPA) became law in the State of Georgia on July 1, 2014. With the passage of the SCPA, many Georgia nonprofits face a new set of rules regarding weapons in and around their workplaces or operating locations.

The SCPA permits an expansion of rights of licensed gun-holders to carry guns and other weapons in public places.

BACKGROUND AND SCOPE OF THE SCPA

The expanded rights provided by the SCPA apply only to holders of a state-issued Weapons Carry License (a "License"). There are between 500,000 and 600,000 Licenses currently held in Georgia. Licenses issued by many other states receive reciprocal recognition in Georgia, although out-of-state license holders must comply with Georgia weapons laws while carrying a weapon in Georgia.

For non-license holders, possession of weapons is limited to an individual's home, business premises and the locked compartment of a motor vehicle. Furthermore, the possession and carrying of certain weapons, including machine guns, explosives and silencers, is prohibited entirely, with very limited exceptions. Certain federal and state public servants (judges, district attorneys and holders of similar offices) and federal and state law enforcement officers have broad-ranging weapons carrying rights. Additionally, certain private security guards, private detectives and similar individuals are to a limited extent exempt from the restrictions on carrying firearms summarized in this article.

LICENSE HOLDERS' RIGHT TO CARRY UNDER THE SCPA

Under the SCPA, a License holder may carry a weapon anywhere in the state of Georgia unless specific exceptions apply. The primary exception is that private property owners may exclude the carrying of weapons on their property. Additionally, the law includes special restrictions for certain types of public property.

Private Property

Private property owners or persons in legal control of privately owned property through a lease, rental agreement, licensing agreement, or any other agreement have the right “to exclude or eject a person who is in possession of a weapon or long gun on their private property.” In this context, private property includes a private passenger motor vehicle. Owners (or persons in control) of private property may post “no weapons,” “no firearms,” or similar notices at the entrances to their premises. However, in Georgia, unlike some other states, such notices will have no legal effect just by virtue of being posted. The owners or those in legal control may exclude or eject an individual for carrying a weapon; the individual, however, will only be in violation of Georgia law if he refuses to exit the property immediately.

Workplaces on Private Property. An employer may establish workplace rules prohibiting employees from bringing weapons onto work premises (note that special provisions may apply if the workplace is located in a government building, as discussed below). However, Georgia law limits the circumstances in which an employer may prohibit an employee from keeping a weapon in a locked compartment of his private vehicle in his work parking lot.

Places of Worship. Historically, all places of worship were off-limits to weapons, including those carried by License holders. Under the SCPA, License holders may carry weapons in places of worship when, and only when, the governing body or authority of the place of worship has expressly permitted it. However, the SCPA gives no guidance on how this permission is given or how to fine a License holder for failing to comply with the prohibition.

Public Property

The SPCA’s provision that a License holder may carry a weapon anywhere in the state of Georgia extends to all publicly owned property and land, except as limited by certain provisions including exceptions for some government buildings, courthouses, jails and prisons, state mental health facilities, and polling places.

Government Buildings. Under the SCPA, a License holder may carry a weapon in a government building “when the government building is open for business and where entry into the building is not restricted or screened by security personnel.” Perhaps the most prominent example of such buildings is a public library, which typically does not screen patrons. License holders may not carry a weapon into a security-screened government building. A License holder who attempts to enter a security-screened government building carrying a weapon commits a misdemeanor unless he immediately exits the building. Courthouses are generally subject to security screening and thus off-limits to weapons carried by License holders. Similarly, a person violates Georgia Code if he or she brings a weapon beyond the security checkpoint in a jail or prison, and similar restrictions exist in relation to State mental facilities, nuclear power facilities and polling places.

With respect to private entities, including nonprofits, that occupy parts or all of a non-screened government building, the law as it currently stands is unclear regarding whether the private occupier may restrict weapon-carrying in the part of the government building that it occupies. Since the passage of the SCPA, the State Attorney General has received questions seeking clarification, and the courts will, in time, likely address such issues. In the

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meantime, the question of whether the private entity may restrict guns will likely depend on the facts of each individual case. The essential factor that is coming to light through a court case involving the Atlanta Botanical Garden (described below) is whether the private entity has a specific “present estate” in the property through its lease or merely a license to use and enjoy the property. In order to qualify as a present estate, the lease must give the private entity the right to use the property in an absolute manner with a right for the owner to receive the property back at the end of the lease and not be injured by such private entity’s use.

Department of Natural Resources Property. Under the SCPA, License holders may possess handguns, but no other weapons, in parks, historic sites, recreation areas, or similar areas operated by or for the Department of Natural Resources.

Schools, School Safety Zones and School Functions. Georgia law continues to prohibit anyone from carrying weapons in schools, school safety zones and school functions. In May 2016, Governor Deal vetoed a bill that would have allowed individuals to carry on college campuses with the limited exceptions of sporting events and student housing. The historical exception for License holders keeping a weapon in a locked compartment of a vehicle while picking up or dropping off a student remains in place. The SCPA, however, has added a provision intended to allow schools to exercise the option to arrange their own armed security on school premises. Specifically, the SCPA allows a person, in certain circumstances, to possess a weapon in a school safety zone, at a school function, on a school bus or other school transportation if the person has been authorized to do so by an authorized school official.

Other Public Property. If government-owned property does not fall under one of the specifically excepted categories, whether the property is deemed to be public or private will determine whether or not guns can be prohibited.

GeorgiaCarry.org v. Atlanta Botanical Garden

This case involves whether the Atlanta Botanical Garden (the “Garden”), which has a fifty-year lease with the City of Atlanta for its property, may restrict weapons in the Garden. In 2014, the Garden had an Atlanta Police Officer escort a member of GeorgiaCarry.org out of the Garden for carrying a holstered gun. GeorgiaCarry.org is arguing that because the City of Atlanta owns the property, the Garden must allow weapons under SCPA. The Garden is arguing that the property is private due to its lease with the City. The case has been through the Fulton County Court, the Georgia Appeals Court and the Georgia Supreme Court several times now.

On October 7, 2019, the Georgia Supreme Court determined that property may only be considered “private” if the holder of the “present estate” in the property is a private person/entity. Whether a private person/entity has a specific “present estate” in the property through its lease or merely a license to use and enjoy the property is the key factor. In order to qualify as a present estate, the lease must give the private person/entity the right to use the property in an absolute manner with a right for the owner to receive the property back at the end of the lease and not be injured by such private person/entity’s use.

If by the terms of its fifty-year lease with the City, the Garden holds the present estate in the

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property, then the property is “private property,” the Garden is a “private property owner,” and it has the right to forbid carrying a firearm on the premises. However, if instead the City holds the present estate in the land it leases to the Garden, then the leased premises is not “private property,” and the Garden has no right to exclude the carrying of firearms on the leased premises because it is not “in legal control of private property through a lease.” The Georgia Supreme Court has sent the case back to the Fulton County court to look at the lease and determine whether the Garden has a present estate in the property.

If your nonprofit leases property from a government agency, you should seek legal advice in determining whether or not a ban on guns is permissible on the leased property under the SCPA.

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