

THE EFFECT OF THE ILLINOIS FIREARM CONCEALED CARRY ACT ON MUNICIPALITIES

by Mark J. McClenathan, mmcclenathan@heylroyster.com

On July 9, 2013, Illinois lawmakers overrode Governor Pat Quinn's amendatory veto of the "Firearm Concealed Carry Act" (the "Act"), making Illinois the last state in the country to adopt a concealed carry law. The Act permits residents and non-residents of the State of Illinois to carry a concealed handgun, but not until they are issued a valid Firearm Concealed Carry Permit issued by the Illinois State Police (ISP). That process will take time. In the meantime, what can municipalities do to prepare? The following article details key areas of consideration for municipalities and what the Act does and doesn't cover, and tells you what you need to do now.

Timing of Implementation

Pursuant to the Act, the Illinois State Police (ISP) is required to comply with the mandates of the Act, including making the Application for a Firearm Concealed Carry Permit available to Illinois citizens within 180 days of the effective date, with licenses to be issued 90 days after a qualified application is submitted. Law enforcement agencies will have 30 days to file an objection. Within 60 days of becoming law, the Act mandates the ISP to begin approval of certified firearms instructors and firearm training courses. The ISP website will provide a registry of instructors and approved classes. (As of the date this article was written, several downstate counties have announced that they will "permit" concealed carry and not require their citizens wait the time needed by the ISP to set up the procedures to obtain a Concealed Carry Permit. This is not recommended, as it is contrary to the Act.)

Who can carry a concealed gun in Illinois?

A Firearm Concealed Carry Permit allows an individual in Illinois to "(1) carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his or her person; and (2) keep or carry a loaded or unloaded concealed firearm on or about his or her person within a vehicle."

In order to obtain a license to conceal and carry a handgun an individual must:

- be 21 years of age;
- have a valid FOID card;
- have not been convicted or found guilty of:
 - a misdemeanor involving the use or threat of physical force or violence in the 5 years preceding the date of the application;
 - 2 or more violations of driving under the influence of alcohol or other drugs within 5 years preceding the date of the application;
- not be the subject of a pending arrest warrant, prosecution, or proceeding for an offense or action that could lead to disqualification to own or possess a firearm;
- have not been in residential or court-ordered treatment for drugs or alcohol within 5 years immediately preceding the date of the application; and
- have completed firearms training and any education required by this Act (applicants must complete 16 hours of safety training).

The Act also requires a full set of fingerprints to be submitted to the ISP. Upon submission of the application and fingerprints, the ISP then conducts a background check of the applicant before issuing a license.

In addition to the above qualifications, "[a]ny law enforcement agency may submit an objection to a license applicant based upon a reasonable suspicion that the applicant is a danger to himself or herself or others, or a

threat to public safety.” If a law enforcement agency does not have an objection to the license applicant, and the applicant meets the other requirements of the Act, the ISP shall process the application.

Where can a citizen carry a gun in Illinois?

It is probably easier to answer this question by first asking “where isn’t concealed carry allowed?”

There are many places where it will be illegal to carry a concealed handgun regardless of whether an individual has a license. Most of those prohibited places are government owned and “controlled” buildings and places such as schools and parks, and the “real estate” and parking facilities related to those places. Specifically, the Act does not allow a person to “knowingly carry a firearm on or into” public places such as:

- **Local government buildings** – “Any building or portion of a building under the control of a unit of local government.”
- **Courts** – “Any building designated for matters before a circuit court, appellate court, or the Supreme Court, or any building or portion of a building under the control of the Supreme Court.”
- **Executive and Legislative** – “Any building, parking area, or portion of a building under the control of an officer of the executive or legislative branch of government, provided that nothing in this paragraph shall prohibit a licensee from carrying a concealed firearm onto the real property, bikeway, or trail in a park regulated by the Department of Natural Resources or any other designated public hunting area or building where firearm possession is permitted as established by the Department of Natural Resources under Section 1.8 of the Wildlife Code.”
- **Jails** – “Any building, real property, and parking area under the control of an adult or juvenile detention or correctional institution, prison, or jail.”
- **Public Transportation** – “Any bus, train, or form of transportation paid for in whole or in part with public funds, and any building, real property, and parking area under the control of a public transportation facility paid for in whole or in part with public funds.”
- **Hospitals** – “Any building, real property, and parking area under the control of a public or private hospital or hospital affiliate, mental health facility, or nursing home.”

The Act also prohibits concealed carry at certain parks and entertainment venues, including:

- **Playgrounds** – “Any public playground.”
- **Parks** – “Any public park, athletic area, or athletic facility under the control of a municipality or park district, provided nothing in this Section shall prohibit a licensee from carrying a concealed firearm while on a trail or bikeway if only a portion of the trail or bikeway includes a public park.”
- **Cook County Forest Preserve District** – “Any real property under the control of the Cook County Forest Preserve District.”
- **Gambling Facilities** – “Any building, real property, or parking area under the control of a gaming facility licensed under the Riverboat Gambling Act or the Illinois Horse Racing Act of 1975, including an inter-track wagering location licensee.”
- **Stadiums** – “Any stadium, arena, or the real property or parking area under the control of a stadium, arena, or any collegiate or professional sporting event.”
- **Amusement Parks** – “Any building, real property, or parking area under the control of an amusement park.”
- **Zoos, Museums** – “Any building, real property, or parking area under the control of a zoo or museum.”
- **Permitted Special Events** – “Any public gathering or special event conducted on property open to the public that requires the issuance of a permit from the unit of local government, provided this prohibition shall not apply to a licensee who must walk through a public gathering in order to access his or her residence, place of business, or vehicle.”

Guns and concealed carry is also not allowed at schools, day care, and other learning places, including:

- **Schools** – “Any building, real property, and parking area under the control of a public or private elementary or secondary school.”
- **Public or private community colleges, colleges, or universities** – “Any building, classroom, laboratory, medical clinic, hospital, artistic venue, athletic venue, entertainment venue, officially recognized university-related organization property, whether owned or leased, and any real property, including parking areas, sidewalks, and common areas under the control of a public or private community college, college, or university.”
- **Child Care Facilities** – “Any building, real property, and parking area under the control of a pre-school or child care facility, including any room or portion of a building under the control of a pre-school or child care facility. ...”
- **Libraries** – “Any building, real property, or parking area under the control of a public library.”

There are several exceptions to these “prohibited areas.” For instance, a concealed carry licensee who is traveling along a public right of way that touches or crosses any of the prohibited places is not in violation of the Act. Further, the Act allows a licensee to store his gun within his parked car even if the car is in a parking area of a prohibited area, though there are exceptions to that rule. The “parked car rule” provides:

- “...any licensee prohibited from carrying a concealed firearm into the parking area of a prohibited location specified in subsection (a), (a-5), or (a-10) of this Section shall be permitted to carry a concealed firearm on or about his or her person within a vehicle into the parking area and may store a firearm or ammunition concealed in a case within a locked vehicle or locked container out of plain view within the vehicle in the parking area. A licensee may carry a concealed firearm in the immediate area surrounding his or her vehicle within a prohibited parking lot area only for the limited purpose of storing or retrieving a firearm within the vehicle’s trunk, provided the licensee ensures the concealed firearm is unloaded prior to exiting the vehicle. For purposes of this subsection, ‘case’ includes a glove compartment or console that completely encloses the concealed firearm or ammunition, the trunk of the vehicle, or a firearm carrying box, shipping box, or other container.”

Another exception was carved out specifically for colleges and universities:

- Nothing in this Act shall prohibit a public or private community college, college, or university from:
 - (1) prohibiting persons from carrying a firearm within a vehicle owned, leased, or controlled by the college or university;
 - (2) developing resolutions, regulations, or policies regarding student, employee, or visitor misconduct and discipline, including suspension and expulsion;
 - (3) developing resolutions, regulations, or policies regarding the storage or maintenance of firearms, which must include designated areas where persons can park vehicles that carry firearms; and
 - (4) permitting the carrying or use of firearms for the purpose of instruction and curriculum of officially recognized programs, including but not limited to military science and law enforcement training programs, or in any designated area used for hunting purposes or target shooting.

“Concealed Carry” is allowed in certain places where alcohol is served, but not in the following:

- **Bars, Taverns and other places that serve alcohol** – “Any building, real property, and parking area under the control of an establishment that serves alcohol on its premises, if more than 50% of the establishment’s gross receipts within the prior 3 months is from the sale of alcohol. The owner of an establishment who knowingly fails to prohibit concealed firearms on its premises as provided in this paragraph or who knowingly makes a false statement or record to avoid the prohibition on concealed firearms under this paragraph is subject to the penalty under subsection (c-5) of Section 10-1 of the Liquor Control Act of 1934.”

- **Special Event Retailer's license, or a Special Use Permit** – “Any building or real property that has been issued a Special Event Retailer's license as defined in Section 1-3.17.1 of the Liquor Control Act during the time designated for the sale of alcohol by the Special Event Retailer's license, or a Special use permit license as defined in subsection (q) of Section 5-1 of the Liquor Control Act during the time designated for the sale of alcohol by the Special use permit license.”

There are places that you would assume are obvious as “no guns allowed” venues, and are nevertheless included in the Act's “prohibited place” list, including:

- **Federal Law** – “Any area where firearms are prohibited under federal law.”
- **Nuclear facilities** – “Any street, driveway, parking area, property, building, or facility, owned, leased, controlled, or used by a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission. The licensee shall not under any circumstance store a firearm or ammunition in his or her vehicle or in a compartment or container within a vehicle located anywhere in or on the street, driveway, parking area, property, building, or facility described in this paragraph.”
- **Airport** – “Any building, real property, or parking area under the control of an airport.”
- **Private Property If Posted by Owner** – “The owner of private real property of any type may prohibit the carrying of concealed firearms on the property under his or her control. The owner must post a sign in accordance with subsection (d) of this Section indicating that firearms are prohibited on the property, unless the property is a private residence.”

Notably absent from the Act is a provision allowing employers from prohibiting the carrying of concealed firearms at their business (though it has been already argued that if the employer is the owner of the property, as noted above, then he or she can prohibit concealed carry).

Signs – No guns allowed

In case a citizen is not sure if he or she is allowed to carry a gun into a certain building or park, the Act provides that signs are required to be posted explicitly prohibiting guns. The new Act provides that, “Signs stating that the carrying of firearms is prohibited shall be clearly and conspicuously posted at the entrance of a building, premises, or real property specified in this Section as a prohibited area, unless the building or premises is a private residence. Signs shall be of a uniform design as established by the Department and shall be 4 inches by 6 inches in size. The Department shall adopt rules for standardized signs to be used under this subsection.” The “Department” referred to is the Illinois State Police.

Home Rule Municipalities

The Act prohibits “home rule” municipalities from enacting ordinances that attempt to regulate or restrict licensees or handguns and ammunition for handguns in a manner inconsistent with the Act. The Act expressly states that the Act “is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.” Firearm Concealed Carry Act § 90.

However, the Act did attempt to give “home rule” municipalities some power by amending 430 ILCS 65/13.1, a section of the Firearms Owners Identification Card Act, which now allows a “home rule” municipality to enact, within 10 days of the effective date of the Act, an ordinance regulating the possession or ownership of assault weapons. If a municipality wishes to create restrictions on assault weapons, it must do so by July 19, 2013. However, an ordinance enacted within the 10-day period may be amended after the 10 day period has lapsed. Thus, as long as a municipality passes an ordinance regarding assault weapons within the 10-day period, it seems that a municipality may be able to then amend the substance of the ordinance without being preempted by the Act.

What do we do now?

Municipalities should take immediate action to implement this new law to prevent problems in the future. The attorneys at Heyl Royster can assist your municipality in drafting new ordinances, policies, and directives to assure compliance with the new Illinois Concealed Carry Act.

First, since the Act preempts home rule municipalities' authority to regulate: the licensing and registration of handguns, the possession of handguns by individuals who have a valid Firearm Owner's Identification Card (FOID) or CCL, and the transportation of firearms, existing local ordinances need to be reviewed and, where necessary, amended (or repealed) to comply with the Act.

Second, all municipalities should (1) identify what buildings and properties owned and controlled by municipalities should be posted "No Guns Allowed," (2) order the required signs, after the signs are standardized and established by the Illinois State Police, and (3) post those properties, as required by the Act.

Third, municipalities should review and update their employee handbooks to ensure that all employees know when they can and cannot carry a gun (since guns are prohibited on virtually all government buildings and some parking areas), and the consequences for violating the Act.

Fourth, local police departments should review their policies to deal with potentially armed citizens, and issue appropriate directives to its officers on how to enforce the rules and requirements of the Act, and on the local ordinances (that pre-date the Act) that are not to be enforced. For example, officers need to be trained on how to determine whether someone pulled over or being interviewed is (1) in actual possession of the concealed firearm, and (2) when to request concealed carry permit and proper identification.

Governmental Practice

Heyl Royster has actively practiced in the field of municipal and general governmental law for more than three decades. We have provided transactional and litigation services to various agencies of the State of Illinois, townships, regional agencies, counties, cities, villages, airport authorities, universities, and a variety of other governmental and semi-governmental agencies. Our experience includes drafting ordinances and related documents as well as assisting our government clients with public employment issues. Please feel free to contact us if we can be of any assistance.

For More Information

John M. Redlingshafer

E-mail: jredlingshafer@heyloyroyster.com
Peoria, Illinois 61602-1352
Suite 600, Chase Building
124 S.W. Adams Street
Phone (309) 676-0400 – Fax (309) 676-3374

John O. Langfelder

E-mail: jlangfelder@heyloyroyster.com
Springfield, Illinois 62791
3731 Wabash Ave.
P.O. Box 9678
Phone (217) 522-8822 – Fax (217) 523-3902

Keith E. Fruehling

E-mail: kfruehling@heyloyroyster.com
Urbana, Illinois 61803-0129
Suite 300, 102 East Main Street
P.O. Box 129
Phone (217) 344-0060 – Fax (217) 344-9295

Mark J. McClenathan

E-mail: mmcclenathan@heyloyroyster.com
Rockford, Illinois 61105-1288
PNC Bank Building, Second Floor
120 West State Street
P.O. Box 1288
Phone (815) 963-4454 – Fax (815) 963-0399

Brett M. Mares

E-mail: bmares@heyloyroyster.com
Edwardsville, Illinois 62025-0467
Suite 100, Mark Twain Plaza III
105 West Vandalia Street
P.O. Box 467
Phone (618) 656-4646 – Fax (618) 656-7940

Timothy L. Bertschy

E-mail: tbertschy@heyloyroyster.com
Chicago, Illinois 60603
Suite 1203, 19 South LaSalle Street
Phone (312) 853-8700

The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.