

THE MINNESOTA CITIZENS' PERSONAL PROTECTION ACT OF 2003 (CONCEAL AND CARRY)–RECENT DEVELOPMENTS[®]

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1. CONCEAL AND CARRY LAW

The Minnesota Citizens' Personal Protection Act of 2003 (otherwise known as the “Conceal and Carry” law) went into effect in May 2003. Essentially, this law made it much easier to obtain a permit to carry a pistol than it previously had been. In fact, this law required a sheriff to issue a permit to carry a pistol unless certain exceptions apply (e.g. danger to self or public, no gun safety training, under age 21, not a citizen or permanent resident, convicted of crimes, etc.). Minn. Stat. § 624.714, subd. 2 & 6.¹

2. EFFECT ON A COMPANY

The Conceal and Carry law affects how a company interacts with both its employees and the general public.

a. Employees

Under the Conceal and Carry law, public and private employers may establish policies to restrict firearm possession by employees acting in the course and scope of their employment. Minn. Stat. § 624.714, subd. 18(a). If an employee violates these policies, the employer may impose “[e]mployment related civil sanctions”; however, an employer may not

¹ The entire text of the Conceal and Carry law is attached as appendix A.

prohibit the lawful possession of firearms in parking areas and facilities. Minn. Stat. § 624.714, subd. 18(a) & (c).

b. General Public

Under the Conceal and Carry law, a private establishment (defined as “a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose”) cannot prohibit lawful possession of firearms in parking areas or facilities. Minn. Stat. § 624.714, subd. 17(b) & (c).

Additionally, a private establishment can only restrict a permit holder from carrying a firearm on the premises if a “reasonable request” is made to the person. Minn. Stat. § 624.714, subd. 17(a).

A “reasonable request” includes the following:

- i. having a conspicuous sign² at every entrance to the establishment stating “(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES”; and
- ii. personally informing the permit holder of the posted sign and demanding compliance.

Minn. Stat. § 624.714, subd. 17(a) & (b).

A permit holder who violates a reasonable request to leave a private establishment is guilty of a petty misdemeanor. Minn. Stat. § 624.714, subd. 17(a). The maximum fine for the first offense is \$25. Id.

3. LEGAL CHALLENGES

² The law defines a conspicuous sign as one with lettering in black typeface at least 1-1/2 inches in height against a bright background that is at least 187 square inches in area.

The Conceal and Carry law was challenged in Ramsey County district court in the case Unity Church of St. Paul v. State of Minnesota, 2004 WL 1630505 (Minn. Dist. Ct. July 14, 2004).³ In Unity, two churches and their congregations sued the state, with the City of Minneapolis and some charitable organizations joining as intervening plaintiffs. The plaintiffs alleged that the law was unconstitutional for three reasons:

- a. it violated a provision of the Minnesota Constitution that requires that laws shall embrace only one subject;⁴
- b. it was a violation of religious freedom, guaranteed under both the state and federal constitutions; and
- c. it was a “taking” in violation of the Due Process clauses of the state and federal constitutions.

The Court in Unity noted that the entire Conceal and Carry law was attached as an amendment to a Senate bill entitled, “A Bill for an Act Relating to Natural Resources” that had already unanimously passed the Senate. 2004 WL 1630505 at *2,9. The Court further noted that this amendment was not discussed in committee in either the House or the Senate. Id. at *9. The Court then found that the Conceal and Carry amendment clearly contained a “totally different subject matter” than the law to which it was attached. Id. at *8. These facts, in relation to the law’s creation, violated the principle of openness in the legislative and regulatory process that Minnesotans hold dear. Accordingly, the Court held that the law violated the intent (to prevent surprise) and meaning of the one-subject provision of the Minnesota Constitution and was therefore unconstitutional.

³ The full opinion is attached as appendix B.

⁴ Article 4, Section 17 of the Minnesota Constitution provides, “LAWS TO EMBRACE ONLY ONE SUBJECT. No law shall embrace more than one subject, which shall be expressed in its title.”

Importantly, the Court specifically did not rule on the issue of whether the law was unconstitutional on religious or Due Process grounds (but did indicate that it found that the law was an unconstitutional infringement on religious freedom as it relates to how churches can use their parking areas). Finding the Conceal and Carry law unconstitutional, the Judge struck the entire amendment from the rest of the law it was attached to and permanently enjoined the defendants and their agents and employees from enforcing the provisions of the law.

4. EFFECT OF STRIKING THE LAW

Because the Ramsey County Court found the Conceal and Carry law unconstitutional and enjoined state agents from enforcing it; the prior law now governs permits to carry pistols. While the prior law makes it more difficult to obtain a permit to carry a pistol, it does not contain the same restrictions that the stricken law contained.⁵ For example, the prior law does not contain any signage requirements, and does not contain language dictating that persons carrying firearms must leave the premises upon a reasonable request. Accordingly, how current signs banning guns on the premises and where permit holders can lawfully carry their firearms is unclear.

5. WHAT NOW?

The State has already appealed the Unity decision to the Minnesota Court of Appeals. The case has not been set on the Court's calendar, and likely will not be heard until after January. After the case is heard, the Court of Appeals must issue a decision in 90 days. Thus, it will likely be April or May before the Court of Appeals decides this issue; and of course,

⁵ The entire text of the 2002 version of Minn. Stat. § 624.714 is attached as appendix C.

either side could and probably will appeal the Court of Appeals' decision to the Minnesota Supreme Court.

In addition to the court battle, additional legislative action is possible. Because the Unity decision rested on the procedural flaw of the law embracing more than one subject, the legislature could circumvent this opinion by passing the law again without attaching it to another law relating to a different subject.

Until the appeal is decided, some companies may decide to maintain the policies they already have in place. If a company has posted signs banning guns on the premises, that company may decide to keep those signs as they express a clear intent to all people who enter. If a company has chosen not to post signs, now is likely not the best time to decide to post signs as it is unclear what effect these signs have in the absence of the new law.