

Guns on Premises

What's the safe approach?

If you ban guns on your business property, do you become the "custodian" of your patrons' safety?

You would under the logic behind legislative proposals in at least four states. Bills introduced over the past two years in Florida, Missouri, Tennessee, and Texas would establish legal liability of business owners for injury incurred by customers and/or employees prohibited from carrying legal weapons on premises.

Responding to the proliferation of "gun-free" and "no weapons" signs in retail establishments, legislators in Tennessee advanced a bill in 2016 mandating that any establishment open to the public that voluntarily prohibits firearms would "assume absolute custodial responsibility for the safety and defense of [a firearms] permit holder."

The bill would have created a cause of action for a handgun permit holder who was killed, injured, or suffered any "compensable loss" because of a prohibition on firearms voluntarily posted by the property owner or operator.¹

Under the law, persons posting firearms prohibitions would assume responsibility for defending permit holders from "the conduct of other invitees, trespassers, employees of the person or entity, vicious animals, wild animals, and defensible manmade and natural hazards." The responsibility would extend beyond the posted premises to any area a permit holder must travel from where his/her gun is stored.

Late in the session, the custodial provisions were stripped from the bill and it was amended to merely provide civil immunity for a business or property owner's decision not to restrict firearms.



(The immunity is limited to that decision alone, however, and does not affect actions alleging other types of liability.)

In that respect, the final law enacted in Tennessee law is similar to a 2014 Wisconsin law that provides civil immunity to employers who allowed employees to carry licensed, concealed firearms on their premises. (Again, the immunity extends only to the decision to allow guns on premises, and would not impact claims of negligent hiring, negligent supervision, or other tort actions.)

In 2017, custodial liability bills resembling the original Tennessee bill were introduced in Florida, Missouri, and Texas, but they are still in committee.

Privatizing safety

Even if these bills are not passed, custodial liability arising from restrictions on firearms might still be enacted through case law. For property owners and managers, they mark a milestone in the privatization of liability for public safety.

The premise of custodial liability proposals is that businesses seeking to prohibit firearms on their premises are depriving

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law-abiding people of their ability to defend themselves; thus, the responsibility for defense must pass to the person or entity restricting firearms.

This logic upends the conventional wisdom for how businesses and property owners can protect themselves from liability for gun violence.

Until recently, the prevailing advice to businesses and property owners was to make it clear they did not allow firearms on their premises. The logic behind that approach was that property owners should not be responsible for injuries from guns brought onsite against their expressed wishes.

The prerogative to prohibit guns on premises is being eroded, however, especially in respect to guns owned by employees.

Most notably, about half the states have adopted “parking lot laws,” which generally prohibit employers from interfering with employee rights to have legal firearms in their own cars when parked in company lots. (Under most such laws, employers can require that the guns be hidden from view and within a locked compartment. Employers are also generally allowed to prohibit weapons in company-owned cars.)

States are taking steps to prevent employers from considering an applicant’s gun ownership in hiring decisions. Wisconsin’s “concealed carry” law prohibits employers from denying employment on the basis that an applicant is licensed to carry a weapon. In Indiana, employers are barred from even asking whether an applicant or employee owns guns.

Landlords’ quandary

As the limits of gun prohibitions on commercial property are being challenged, residential landlords are also finding their prerogative to prohibit guns being curtailed. Virginia prohibits lease terms that would restrict residents from lawful ownership of firearms within dwelling units. Minnesota has

a similar provision that also allow guests of a tenant to have lawful firearms on premises.

Property owners operating in multiple states can’t be happy about the prospect of a new patchwork of approaches toward premises liability for guns, and even property owners within a single jurisdiction will be challenged to come up with an approach that satisfies all stakeholders, promotes public safety, and achieves business objectives.

Landlords clearly need legal advice to address questions rising in a rapidly changing area of the law:

- Can property owners require patrons to disclose if they are carrying weapons? If so, can those patrons be treated differently, perhaps subjected to added surveillance, or directed to special service areas?
- Can property owners require licensed gun owners in “open carry” states to conceal their weapons, so they do not alarm other patrons?

It may be best not to ask such questions if you’re not serious about acting on the answers, however. Gun restrictions that are posted with no effort to monitor or enforce them can actually create liability for a property manager if someone who honors the ban is killed or injured by someone who doesn’t.

The best response for a property owner may be to avoid making gun policy on its own, and instruct its lessees to do the same, and let the public, through their legislative representatives, write the rules for public safety and our personal liability for protecting it.

¹Under the original bill, a plaintiff would have to demonstrate that the posted prohibition actually prevented him or her from carrying a weapon into an establishment. If a permit holder left his/her gun at home to run errands to several establishments, some of which allowed guns and some didn’t, he/she might not be able to bring an action under the bill.