

Misconceptions Motivate Bills to Mandate Liability Insurance for Gun Owners

Paul Tetrault, JD, CPCU, ARM, AIM
NAMIC State and Policy Affairs Counsel

The emotionally charged public discussion over guns and gun violence has prompted legislators in a number of states to try to harness insurance as a partial solution by filing bills to mandate that gun owners carry liability insurance. The start of the 2013 legislative session followed closely upon the horrific school shooting in Newtown, Connecticut, and lawmakers across the country focused a significant amount of energy on developing new ways to address gun violence during the session. The novel idea of mandating that gun owners carry liability insurance was seized upon by lawmakers in seven states¹ and Washington, D.C. as well as a member of Congress.

■ Reduction Objective

The public statements by those who proposed and supported these bills made it clear that their objective was to reduce acts of violence involving guns by changing behavior. Proponents suggested that requiring insurance would introduce market-based incentives to affect the behavior of gun owners in a favorable way. For instance, the memorandum in support of the mandate bill filed by Assemblyman Felix Ortiz of Brooklyn stated that requiring insurance would “serve as an incentive for firearm owners to implement safety measures in order to conduct the activity as safely as possible and only when necessary.”

Proponents suggest that the cost of insurance could affect gun-buying decisions, including whether or not to purchase what those proponents view as more dangerous or safer guns. Similarly, they suggest that insurers could promote the use of safety measures such as trigger locks and proper storage. An underlying theme running through the comments of several proponents suggested that the insurance mechanism could be harnessed to reduce gun violence in ways similar to the ways in which the insurance industry has promoted safety in other areas, such as highway safety.

While there may indeed be facial appeal to the hopeful assertions of the proponents of a gun insurance mandate, there are a number of misconceptions behind them. Full consideration and analysis of the issue suggest that in fact a gun liability mandate would not achieve the goal of having a material impact on the use of guns to commit acts of violence.

■ A Number of Misconceptions

One misconception behind the assertions of proponents is that generally gun owners do not have any liability insurance that could potentially respond to situations involving guns. Proponents seem to think they are proposing to introduce insurance coverage into an area where none exists already. In fact, the liability coverage afforded by homeowners, renters and personal umbrella policies typically responds to a broad range of situations in which an insured has to pay damages to another party. So in fact many people are covered by liability insurance that at least has the potential to respond to covered incidents involving guns. In other words, just because most individuals do not purchase “gun liability insurance” per se does not mean that they don’t have liability insurance that covers gun-related liability; they merely do not have insurance that specifically covers *only* gun-related liability.

But liability coverage provides coverage for accidents involving negligence rather than intentional acts such as those associated with gun violence. This point relates to another fundamental misconception held by proponents of gun liability bills: that the mandated insurance would provide coverage for acts of violence. Acts of violence by their nature involve

Issue Brief



Paul Tetrault, JD, CPCU, ARM, AIM
NAMIC State and Policy
Affairs Counsel
ptetrault@namic.org

3601 Vincennes Road
Indianapolis, IN 46268
Phone: 317.875.5250
Fax: 317.879.8408
www.namic.org

NAMIC is the largest property/casualty insurance trade association in the country, with regional and local mutual insurance companies on main streets across America joining many of the country's largest national insurers who also call NAMIC their home. Our 1,400 members serve more than 135 million auto, home and business policyholders, and writing more than \$196 billion in annual premiums. More than 200,000 people are employed by NAMIC member companies.

NAMIC[®]
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

intentional conduct which is generally excluded from coverage.² Consequently, no liability insurance that exists or that would be developed in response to a coverage mandate would provide indemnity coverage for gun-related violence (although an insurer could be required to pay defense costs in ambiguous situations involving allegations of both negligence and intentional conduct).

One of the bills filed during the 2013 legislative session stood out in that its language seemed to anticipate insurance coverage for intentional acts. The bill filed in New York stated that gun owners must have coverage to pay for damages “resulting from any negligent or willful acts” involving the use of a firearm. However, requiring gun owners to purchase such coverage does not mean that the market will provide it. Where the market does not and would not provide coverage for intentional acts on a voluntary basis, there is reason to be concerned that the mandate on gun owners could be accompanied by a mandate on insurers to provide the coverage. A coverage mandate in turn could result in issues involving the development of residual markets.

■ Gun Insurance Does Not Equal Auto Insurance

Several proponents of mandatory gun liability insurance have tried to equate gun insurance with auto insurance. They have done so by pointing out that almost every state requires drivers to have insurance, so it makes sense to have a similar requirement for gun ownership. For instance, the sponsor of a bill in California asserted that if “the government requires insurance as a condition of operating a car ... at the very least we should impose a similar requirement for owning a firearm.”³

The attempt to link the envisioned gun insurance with auto insurance, however, ignores the fact that like other liability lines of insurance, auto insurance does not provide coverage for intentional acts. If a driver intentionally runs someone over with a car, that incident will not be covered. Additionally, the ownership of a gun has constitutional implications, but there is no constitutional right to drive a car. It is likely that an enacted gun insurance mandate would be subject to a constitutional challenge.

■ Compliance Considerations

Another important issue to consider is who would and who would not comply with a gun insurance mandate. Presumably only responsible and law-abiding gun owners, those who would be the least likely to commit acts of violence with their guns, would comply with a statutory mandate.

Meanwhile, those most likely to commit acts of violence with guns would probably not comply. As a consequence, whatever incentives that might be at work to change behavior relating to gun ownership and gun use would be ineffective.

■ Looking Forward

While the novel idea of mandating gun liability insurance sprang up in a remarkable number of jurisdictions in 2013, notably none of the bills received favorable action of any kind. No bill was enacted, no bill was approved by a single legislative chamber, and no bill was even approved by a legislative committee.⁴ In Illinois, one state where the proposal was put to a vote by legislators when it was put forward as an amendment to a broader

gun control bill, it was overwhelmingly defeated.⁵ And late in the year, a Florida legislator filed a bill to prohibit insurers from treating gun owners differently in a move that was apparently intended to be a preemptive strike against the possibility of a gun insurance mandate.⁶

With such a poor legislative track record, it is reasonable to question whether gun liability mandates will continue to be proposed in the future. The brief history of the idea being floated in both mass media and the legislative arena suggests that, despite its foundational flaws, the notion that mandating insurance for gun owners will help the problem of gun violence could persist for some time.

From the start, the issue has been more of a public relations phenomenon than an earnest policy debate. After initial reports that a Massachusetts state representative had filed a bill to mandate gun insurance, media coverage of the idea of gun liability insurance and the filing of legislation spread across the country. In subsequent stories about a bill being introduced, the sponsoring legislators would typically cite the fact that the idea was being considered by lawmakers in other states as a reason for it to be considered in the lawmakers' states.

The supposed merits of a mandate were touted early on in published pieces by ostensible experts. The *Hartford Courant*, the leading paper in Connecticut where the worst school shooting took place, published an opinion piece titled, "Requiring Gun Insurance Will Increase Safety," written by H.L. Pohlman, a professor of political science at Dickinson College in Pennsylvania.⁷ And Marsha N. Cohen, a professor at the UC Hastings College of the Law whose area of expertise appears to be neither insurance nor gun law but rather food and drug safety, published an opinion piece on the website of the *San Francisco Chronicle*

entitled, "Mandatory insurance might control guns."⁸

Since then, credentialed authorities including law professors at Southern Illinois University School of Law and the University of Connecticut Law School have offered contrary opinions about the effects of a gun insurance mandate.⁹ But debunking arguments notwithstanding, the facial appeal of the idea may be too much to resist for legislators who want to be seen as seeking innovative ways to address gun violence.

An apt illustration of the persistence of these proposals despite their flaws and poor political track record can be seen in the statement of Rep. Carolyn Maloney, a member of Congress from New York, as she filed HR-1369, the Firearms Risk Protection Act,¹⁰ to require gun owners to purchase liability coverage and to show proof of that coverage when they purchase a firearm. In declaring an insurance mandate "an idea whose time has come" in her official remarks, Rep. Maloney cited the fact that lawmakers in several states including Massachusetts and Illinois had introduced similar legislative proposals. Meanwhile, the Illinois proposal had been rejected by lawmakers in that state a day earlier by a margin of more than two to one.

■ Endnotes

¹ California (AB-231), Connecticut (HB-6656), Illinois (HB-1155, H-AM 20), Maryland (SB-577), Massachusetts (H-3253), New York (A-3908), Pennsylvania (HB-521), and District of Columbia (B20-0170).

² Some courts have concluded that excluding intentional acts from coverage should not preclude acts of self-defense from coverage. See generally John D. Ingram, *The Expected or Intended Exclusion in Liability Insurance: What About Self-Defense?*, 42 *Creighton L. Rev.*

123 (2009), and Alex Dzioba, *Note: No Defense for Self-Defense: Determining Whether Courts Should Order Insurers to Represent Insureds who have Acted in Self-Defense*, 82 *Fordham L. Rev.* 205 (2013)

³ See <http://asmdc.org/members/a19/news-room/press-releases/assemblymembers-ting-and-gomez-introduce-gun-liability-insurance-bill>.

⁴ See "Gun Insurance Proposals Stall as Critics Cite Obamacare," by Marci Jacobs Nov 19, 2013, at <http://www.bloomberg.com/news/2013-11-19/firearm-insurance-proposals-languish-as-critics-invoke-obamacare.html>.

⁵ See "Illinois Lawmakers Reject Firearm Liability Insurance Bill," March 21, 2013, at <http://www.insurancejournal.com/news/midwest/2013/03/21/285431.htm>.

⁶ See <http://www.weartv.com/template/cgi-bin/archived.pl?type=basic&file=/news/features/top-stories/stories/archive/2013/11/uijMw7YY.xml#UqjJx2ex7cs>.

⁷ At http://articles.courant.com/2013-02-01/news/hc-op-pohlman-insurance-to-curb-gun-violence-0103-20130201_1_gun-owners-gun-violence-rapid-fire-weapons.

⁸ At <http://www.sfgate.com/opinion/openforum/article/Mandatory-insurance-might-control-guns-4184778.php/>

⁹ See "Warnings issued over gun-owner liability insurance model," by Caitlin Bronson, Nov 27, 2013, at <http://www.ibamag.com/news/warnings-issued-over-gunowner-liability-insurance-model-16299.aspx/>

¹⁰ See <http://thomas.loc.gov/cgi-bin/query/z?r113:E21MR3-0077/>