

Business Owner Liability and Concealed Weapons Legislation: A Call for Legislative Guidance for Pennsylvania Business Owners

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I. Introduction

Homicides resulting from workplace violence are the first leading cause of death for women in the workplace and the third leading cause of death for men.¹ Between 1993 and 1999, 1.7 million people were victims of violence while at work or on duty.² Estimates of the economic cost of workplace violence are as high as thirty-five billion dollars per year.³ Over 77 percent of workplace homicides in 2002 were the result of a shooting.⁴ In workplace violence incidents that did not result in death, 30 percent of victims reported that their attackers were armed, and one-third of those attackers carried handguns.⁵

In response to workplace violence, business owners⁶ are

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1. BUREAU OF LAB. STAT., NAT'L CENSUS OF FATAL OCCUPATIONAL INJURIES (2001), available at www.bls.gov. The 2001 workplace homicide rate (which excludes the deaths that occurred on September 11, 2001) was at its lowest level since the Bureau of Labor Statistics began compiling statistics in 1992. See *id.*, available at <http://data.bls.gov/cgi-bin/survey/most> (last visited Nov. 1, 2003).

2. BUREAU OF LAB. STAT., NAT'L CRIME VICTIMIZATION SURVEY, 1993-1999 (2001), available at www.bls.gov.

3. Deanne M. Mosley & Amy D. Whitten, *Caught in the Crossfire: Employer's Liability for Workplace Violence*, 70 MISS. L.J. 505, 507 (2000) (citing a 1997 survey by the Workplace Violence Institute). Costs associated with workplace violence include lost workdays, litigation costs, and recovery costs. *Id.*

4. BUREAU OF LAB. STAT., NAT'L CENSUS OF FATAL OCCUPATIONAL INJURIES (2002), available at <http://www.bls.gov/iif/oshwc/cfoi/cftb0156.pdf>.

5. OCCUPATIONAL HEALTH & SAFETY ADMIN., WORKPLACE VIOLENCE AWARENESS AND PREVENTION (1996), available at http://www.osha.gov/workplace_violence/wrkplaceViolence.PartI.html.

6. This Comment uses the term "business owner" in the general sense of a private property owner or a person who, although she does not possess title to the property, has a

implementing workplace safety policies designed to prevent violent acts committed by employees or on business premises.⁷ Searches, surveillance, background checks, psychological and drug testing, and stress management programs have become standard methods of combating workplace violence.⁸

Business owners increasingly include weapons regulations in workplace safety policies, either prohibiting employees from carrying weapons while in the scope of employment or restricting the areas where employees may carry or display weapons.⁹ Business owners also post notices prohibiting non-employees from carrying weapons on business premises.¹⁰

Business owners, however, face legal uncertainty in the wake of legislation permitting citizens to carry weapons concealed on their person.¹¹ Business owners who do not prohibit concealed weapons could be liable for failing to control employees who intentionally or accidentally cause injuries using a weapon,¹² for permitting employees with violent histories or inadequately supervised employees to carry weapons on the premises,¹³ for failing to protect customers from concealed weapons carriers,¹⁴ or for creating an unsafe work environment for employees.¹⁵ If a business owner does choose to prohibit concealed weapons, she could still face liability for failing to adequately enforce a weapons prohibition,¹⁶ for violent acts that could have been stopped if victims had been permitted to carry weapons,¹⁷ or for turning the business premises into a target for criminals seeking unarmed victims.¹⁸ Consider the following scenarios.

Scenario One: An employee obtains a permit to carry a concealed weapon and brings it to the workplace. The employer does not prohibit

greater right to possession than the actor. See Op. Tex. Att'y Gen. DM-363 (1995).

7. See Tanja Lueck Thompson, *Weapons in the Workplace: The Effect of Tennessee's Concealed Weapons Statute on Employer Liability*, 28 U. MEM. L. REV. 281, 300-08 (1997).

8. These methods have met constitutional challenges that will not be addressed in this Comment. See *id.*

9. See *What's Happening in Employment Law*, 5 DEL. EMP. LAW LETTER (Mar. 2000). A recent study by the Society for Human Resources indicates that as many as 79 percent of employers regulate or prohibit weapons on business premises. *Id.*

10. *Id.*

11. See Richard Dahl, *The Sign of the Future May Be "Please Check Your Gun at the Door,"* 82 A.B.A. J. 72 (Aug. 1996).

12. See *infra* Part II.A.1. and accompanying notes.

13. See *infra* Part II.A.2. and accompanying notes.

14. See *infra* Part II.A.3. and accompanying notes.

15. See *infra* Part II.C. and accompanying notes.

16. See *infra* Part II.A.3. and accompanying notes.

17. See *id.*

18. See *id.*

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weapons on the business premises. During a robbery on the business premises, the employee draws the weapon in self-defense but accidentally shoots a customer instead of the robber. The customer sues the employer, claiming that the employer is liable for the employee's negligence because the employer should have prohibited weapons. Is the employer liable?

Scenario Two: An employee threatens to "blow up my cubicle." The employer ignores the threat and, because she does not conduct background checks, is unaware that the employee recently obtained a permit to carry a concealed weapon. The employer does not prohibit weapons on the business premises. The employee shoots a customer after the customer insults him. Is the employer liable?

Scenario Three: A business owner prohibits weapons on the business premises, but a customer ignores the prohibition and carries a firearm, concealed in her purse, onto the business premises. The gun accidentally fires and injures another customer. The injured customer sues the business owner, claiming that she failed to adequately enforce the weapons prohibition. Is the business owner liable?

Scenario Four: A customer with a permit to carry a concealed weapon sees a notice on a store window prohibiting weapons. The customer leaves his weapon in his car and enters the store. While exiting the store, the customer is attacked by an unknown assailant. The customer sues the store's owner, claiming that the attack could have been stopped if the customer had been carrying a concealed weapon. Is the business owner liable?

Part II of this Comment addresses the preceding scenarios in the context of private property owner liability in states with concealed weapons legislation. This Comment concludes that, despite the risk of liability when weapons prohibitions are inadequately enforced, business owners should implement workplace safety policies applicable to both employees and non-employees that prohibit or significantly limit the presence of weapons on business premises.

Part III of this Comment recommends legislative guidance for Pennsylvania business owners seeking to prohibit weapons on business premises. Using states with similar concealed permitting policies as a model, this Comment concludes that business owners should be given explicit legislative authority to prohibit concealed weapons carriers from the business premises and specific methods for posting notices of a prohibition. Criminal sanctions should also be imposed against violators of concealed weapons prohibitions, and employers should be granted access to permitting information in order to conduct background checks of prospective and current employees.

II. Business Owner Liability for Workplace Violence

Business owners could be liable to both employees and non-employees for weapons-related injuries occurring on their business premises. Although sovereign immunity would most likely bar any negligence action against public employers,¹⁹ private businesses face significant liability for violent acts committed by their employees or on business premises.

A. Theories of Business Owner Liability to Non-Employees

1. Respondeat Superior

Employers could be liable for the violent acts of an employee based on the common law doctrine of respondeat superior. As a general rule, employers are liable for the tortious acts of their employees committed during the scope of employment.²⁰ An employee is within the scope of employment if his conduct “(a) is the kind he is employed to perform; (b) occurs substantially within the authorized time and space limits; [and] (c) is actuated, at least in part, by a purpose to serve the master.”²¹ If the employee uses intentional force, the use of force must not be totally unexpected by the employer.²²

Employees committing intentional violent acts with a weapon,

19. See 1 PA. CONS. STAT. § 2310 (2002). Sovereign immunity bars any action at law against government entities not enumerated as a specific exception. *Id.* The exceptions to sovereign immunity listed in 42 PA. CONS. STAT. § 8522 are narrowly construed. See *Love v. Philadelphia*, 543 A.2d 531, 532 (Pa. 1988). Acts committed by a third party involving weapons would most likely not fall within any of the exceptions to sovereign immunity. See *Greenleaf v. Southeastern Pa. Transp. Auth.*, 698 A.2d 170 (Pa. Commw. Ct. 1997) (the vehicle liability exception to sovereign immunity did not apply where a victim of a criminal assault asserted a negligence claim against a train operator for not opening the train’s doors to allow him to escape); *Alexander v. Dep’t of Pub. Welfare*, 586 A.2d 475 (Pa. Commw. Ct. 1991) (the medical-professional exception did not apply because the harm was caused by the criminal acts of a third party); *Douglas v. Phila. Hous. Auth.*, 578 A.2d 1011 (Pa. Commw. Ct. 1990) (the real estate exception did not apply because the actions of a third party were the proximate cause of the plaintiff’s injury).

The Commonwealth Employees’ Right to Self-Defense Act, a bill introduced in the Pennsylvania House of Representatives in February 2003, would create a cause of action against Commonwealth employers who “discharge, threaten or otherwise discriminate” against employees who carry weapons. H.R. 185, 2003 Leg., 187th Gen. Sess. (Pa. 2003), available at <http://www2.legis.state.pa.us/WU01/LI/BI/BT/2003/0/HB0185P0214.pdf>.

20. See *Lunn v. Yellow Cab Co.*, 169 A.2d 103, 104 (Pa. 1961); *Brennan v. Merchant & Co.*, 54 A. 891, 891 (Pa. 1903).

21. RESTATEMENT (SECOND) OF AGENCY § 228; see *Fitzgerald v. McCutcheon*, 410 A.2d 1270, 1272 (Pa. Super Ct. 1979).

22. See *Fitzgerald*, 410 A.2d at 1272.

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however, could be acting outside the scope of employment. Although respondeat superior liability can result from an employee's intentional and criminal acts,²³ the liability does not extend to an employee's "outrageous acts" that indicate a motive of personal malice.²⁴

In Pennsylvania, claims of respondeat superior have been denied when the employees' violent acts involved a firearm.²⁵ The employees were found to be acting outside the scope of employment due to the "outrageous" nature of their actions.²⁶ The Pennsylvania Supreme Court rejected a respondeat superior claim against a cab company because the cab driver's use of a gun to shoot at a taunting crowd indicated a motive of personal malice.²⁷ The court has also held that a bartender who shot a customer for annoying a female customer was outside the scope of employment despite a workplace policy requiring bartenders to maintain the safety of the premises.²⁸

In both cases, however, the court focused on the irrationality of the employee's actions rather than the actual use of a weapon.²⁹ If an employee uses a weapon for a rational purpose that does not indicate a motive of personal malice, the employer could still be liable under the doctrine of respondeat superior for the employee's negligence.³⁰

For example, the employee in Scenario One fires a weapon to prevent a robbery and to protect the employer's business. The employer does not prohibit weapons; therefore, the use of force by the employee is not totally unexpected. The employee's act of stopping the robbery appears to be rational and motivated by an intent to serve his employer, rather than by personal malice. As a result, the employer in Scenario One could be liable for the injury to the customer caused by the

23. See *Orr v. William J. Burns Int'l Detective Agency*, 12 A.2d 25 (Pa. 1940); *Pilipovich v. Pittsburgh Coal Co.*, 172 A. 136 (Pa. 1934).

24. See *Lunn*, 169 A.2d at 104 (rejecting a respondeat superior claim against a cab company whose driver assaulted a pedestrian).

25. *Potter Title & Trust Co. v. Knox*, 113 A.2d 549, 551 (Pa. 1955); *Howard v. Zaney Bar*, 85 A.2d 401, 403 (Pa. 1952).

26. *Potter*, 113 A.2d at 551; *Howard*, 85 A.2d at 403.

27. *Potter*, 113 A.2d at 551.

28. *Howard*, 85 A.2d at 403.

29. "The disorder [caused by the bar customer] was so insignificant and the use of violent force so excessive and dangerous, totally without responsibility or reason, that we are compelled as a matter of law to absolve defendant of vicarious liability." *Id.* "There was no need for [the taxicab driver] to protect himself... it was an act wholly unauthorized by his employers." *Potter Title*, 113 A.2d at 552.

30. In Pennsylvania, employees using firearms are most often considered within the scope of employment when the employees are security personnel authorized to carry weapons to protect the business premises. See *Orr*, 12 A.2d at 27; *Berryman v. Pa. R.R. Co.*, 77 A. 1011 (Pa. 1910). Because the scope of employment depends on the circumstances, whether an employee was acting within the scope of employment remains a question for the jury. *Simmons v. Pa. R.R. Co.*, 48 A. 1070, 1072 (Pa. 1901).

employee's use of a weapon.

2. Negligent Hiring, Supervision, or Retention

Employers could be liable for the violent acts of their employees based on a theory of negligent hiring, supervision, or retention. An employer has a duty to exercise reasonable care in selecting, supervising, and controlling employees.³¹ An employer breaches that duty if the employer "knew of or should have known that an employee was dangerous, careless or incompetent and such employment might create a situation where the employee's conduct would harm a third person."³²

Unlike the doctrine of respondeat superior, an employer could be liable under the theory of negligent hiring, supervision, or retention for the violent acts of an employee involving weapons, even if the act's "outrageous" nature indicates a motive of personal malice. If an employee acts for personal reasons and is therefore outside the scope of employment, an employer is still liable under a theory of negligent hiring, supervision, or retention if the act occurred: (1) on the employer's premises; (2) on premises that the employee is permitted to enter only as an employee; or (3) while the employee was using the employer's property.³³

Permitting weapons in the workplace could expose an employer to claims that the employer should have foreseen that an employee could harm a third person or that employees carrying weapons should have been more closely supervised.³⁴ The doctrine of negligent hiring, supervision, or retention requires that the employer foresee that the employee could harm a third person³⁵ and foresee the necessity to control the employee.³⁶ If it is foreseeable to an employer that an employee could commit an act of violence, then the employer is under a duty to control the employee.³⁷ Because employees with weapons could cause more harm than unarmed employees, the possibility that an employee's actions could harm a third person and that control of employees is necessary becomes more foreseeable to an employer who permits

31. *Brezenski v. World Truck Transfer, Inc.*, 755 A.2d 36, 42 (Pa. Super. Ct. 2000); RESTATEMENT (SECOND) OF AGENCY § 213 (1958).

32. *Brezenski*, 755 A.2d at 39; *Dempsey v. Waldo Bureau, Inc.*, 246 A.2d 418 (Pa. 1968).

33. *Brezenski*, 755 A.2d at 41; RESTATEMENT (SECOND) OF TORTS § 317 (1965).

34. See Raneta Lawson Mack, *This Gun for Hire: Concealed Weapons Legislation in the Workplace and Beyond*, 30 CREIGHTON L. REV. 285, 312 (1997).

35. *Brezenski*, 755 A.2d at 39.

36. *Id.* at 41.

37. See *Hutchison v. Luddy*, 742 A.2d 1052, 1057 (Pa. 1999) (holding bishop liable for failure to prevent a priest from committing the foreseeable harm of molestation when he knew of the priest's pedophilic propensity and the opportunity to commit acts of abuse).

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weapons in the workplace.³⁸

For example, the employer in Scenario Two permits weapons in the workplace and therefore should have foreseen that an employee carrying a weapon could fire it. The employer could be liable for failing to conduct an adequate background check to discover if the employee had a permit to carry a concealed weapon.³⁹ The employer could also be liable for inadequately supervising an armed employee or for retaining the employee after he made violent threats. Ultimately, an employer who permits weapons in the workplace may be more susceptible to a claim of negligent hiring, supervision, or retention.

3. Premises Liability

Business owners could be liable for the violent acts of a third party committed against public invitees⁴⁰ or business visitors.⁴¹ A business owner must take reasonable care to discover accidental, negligent, or intentional acts being committed, or acts that are likely to be committed, and to protect visitors from those acts.⁴² An owner does not exercise reasonable care if she fails to use reasonable means to protect invitees despite knowledge that violent acts may occur based on past experience or the place and character of the business.⁴³

A business owner who prohibits weapons on the business premises could be shielding himself from premises liability. Prohibiting weapons is a reasonable means of increasing safety for customers because it prevents employees and other customers from using weapons to cause accidental or intentional harm.⁴⁴

38. See Mack, *supra* note 34, at 312-15.

39. Business owners should require current and prospective employees to “identify whether they have applied for or been issued a license to carry a handgun, have been denied a license or had their license revoked or suspended, or have been charged with or convicted for violating any law or regulation relating to concealed handguns.” See Dahl, *supra* note 11. In Pennsylvania, however, all information relating to an individual’s application or subsequent revocation of a concealed weapons permit is confidential and therefore an employer could not verify the information provided by employees. See 18 PA. CONS. STAT. § 6111(i) (2002).

40. RESTATEMENT (SECOND) OF TORTS § 332 (1965). A public invitee is a person “invited to enter and remain on the land as a member of the public for a purpose for which the land is held open to the public.” *Id.*

41. A business visitor is “a person who is invited to enter and remain on the land for a purpose directly or indirectly connected with business dealings with the possessor of the land.” *Id.*

42. See Moran v. Valley Forge Drive-In Theater, Inc., 246 A.2d 875 (Pa. 1968) (citing RESTATEMENT (SECOND) OF TORTS § 344 (1965)).

43. *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 344, cmt. F (1965)). The duty is one of reasonable care and the owner is not to be viewed as an insurer of the visitor’s safety. *Id.*

44. See Mack, *supra* note 34, at 314. A “ban may help avoid a situation where a distraught employee grabs a gun and opens fire.” Tom Puleo & Matthew Daly, *State*

However, a business owner who prohibits weapons may also be subjecting himself to a heightened duty of care. A business owner could be liable for failing to adequately enforce a weapons prohibition; although under no duty to provide extra safety precautions such as security personnel or metal detectors, an owner is liable for the negligent provision of the precautions provided.⁴⁵

For example, the business owner in Scenario Three who fails to detect the concealed weapon in a customer's purse could be liable for negligently enforcing the weapons prohibition. However, courts may be reluctant to impose a duty on a business owner to install metal detectors or otherwise act as an insurer of safety.⁴⁶ Only the Texas Attorney General has addressed the issue; he suggests that a business owner who posts a notice of a weapons prohibition exercises sufficient reasonable care so that he would not be liable for injuries caused by customers who violate the prohibition.⁴⁷

A weapons prohibition also prevents customers from using weapons for protection. As a result, business owners prohibiting weapons may have the added burden of taking precautions to prevent the business premises from becoming a place where criminals know they can easily attack unarmed customers.⁴⁸

For example, the business owner in Scenario Four could be liable for preventing the customer from protecting himself with his concealed weapon. Although the customer would have to demonstrate that the attack could have been prevented if he had been carrying his weapon, the business owner could be liable for creating a dangerous environment for customers by preventing them from defending themselves.⁴⁹

Offices Shouldn't Resemble the Wild Wild West, HARTFORD COURANT, Aug. 5, 1999, at A1.

45. See RESTATEMENT (SECOND) OF TORTS § 323 (1965); see also *Feld v. Merriam*, 485 A.2d 742, 746-47 (Pa. 1984) (citing § 323 and stating that the extra precaution of employing security personnel leads to a heightened duty).

46. See Dahl, *supra* note 11.

47. Op. Tex. Att'y Gen. DM-363 (1995).

48. See Mack, *supra* note 34, at 314. A Texas woman whose parents were shot at a cafeteria while she attempted to fend off the attacker with a butter knife has been credited with convincing legislatures in several states to adopt legislation permitting citizens to carry concealed weapons. See Ralph Winningham, *Texas Massacre Spurs Concealed Handgun Law*, TIMES UNION, Oct. 27, 1997, at 1.

49. See Dahl, *supra* note 11. Glenn Reynolds, a constitutional law scholar and associate professor at the University of Tennessee College of Law, states that if he were a store owner who prohibited weapons, "I would worry that I would be in a position of essentially being an insurer. That is, having deprived people of the ability to defend themselves, I would have [incurred a] responsibility to protect them." *Id.*

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B. Theories of Business Owner Liability to Employees

An employer could be liable to his employees for the violent act of a third party if the act is motivated by personal reasons rather than work-related animosity. Although Worker's Compensation Acts generally provide the exclusive remedy for injuries sustained in the workplace,⁵⁰ an exception exists for acts motivated by "personal reasons."⁵¹

An employee injured by a co-worker must prove the co-worker's personal motivation in order to sustain a respondeat superior or negligent hiring, retention, or supervision claim against his employer.⁵² "When an employee is injured in an attack by a fellow employee, there is a rebuttable presumption that the claimant is covered by the [Worker's Compensation] Act."⁵³ An attack resulting from an ongoing "feud" may be motivated by personal reasons even though the "initial spark for the animosity was work-related."⁵⁴ When a history of animosity cannot be found, however, the attack is presumed to be motivated by work-related animosity and therefore the Worker's Compensation Act controls.⁵⁵

An employee injured by a non-employee could claim general premises liability against his employer; however, he must still prove that

50. PA. STAT. ANN. tit. 77, § 481 (West 2002). Because this Comment focuses on legislative protections for Pennsylvania business owners, the discussion of worker's compensation law includes only Pennsylvania law.

51. *Id.* § 411; *see* *Krasevic v. Goodwill Indus.*, 764 A.2d 561, 568 (Pa. Super. Ct. 2000) ("[A] showing of personal animus is not strictly required . . . what is required is a showing that the victim was attacked for purely personal reasons unrelated to employment.").

52. *See* *Mike v. Aliquippa*, 421 A.2d 251, 254 (Pa. Super. Ct. 1980).

53. *Id.* (holding that an attack by fellow police officers was motivated by personal reasons because the dispute had been ongoing for several months and was a retaliation for the victim filing charges against the assailants). An employee "must assert that his injuries are not work-related because he was injured for purely personal reasons." *Kohler v. McCrory Stores*, 615 A.2d 27, 31 (Pa. 1992).

54. *Mike*, 421 A.2d at 254; *see* *McBride v. Hershey Chocolate Corp.*, 188 A.2d 775, 777 (Pa. Super. Ct. 1963) (applying the personal reasons exception because a dispute between co-workers existed for eight years before the attack occurred); *Scott v. Acme Wire Prod. Co.*, 319 A.2d 436, 438 (Pa. Commw. Ct. 1974) (applying the personal reasons exception because the dispute arose from pre-existing animosity that was not work-related).

55. *See* *Abbott v. Anchor Glass Container Corp.*, 758 A.2d 1219 (Pa. Super. Ct. 2000) (holding that the "personal reasons" exception did not apply where an employee shot fellow employees because the employee was suspended immediately before the incident, the victims did not socialize outside of the workplace with the employee, and the employee shot only supervisory personnel); *see also* *Feidler v. Morris Coupling Co.*, 784 A.2d 812, 816 (Pa. Super. Ct. 2001) (rejecting a negligence claim against an employer because the employee failed to demonstrate a history of personal animosity with his fellow employee); *Gen. Elec. Co. v. Workmen's Comp. Appeal Bd.*, 412 A.2d 196 (Pa. Commw. Ct. 1980) (holding that "horseplay," which led to an injury, was not motivated by personal reasons and granting worker's compensation).

the act was motivated by personal reasons. When an injury occurs on the employer's premises, there is a rebuttable presumption that the injury is work-related.⁵⁶ An employee injured by a non-employee, however, may be more successful in proving that the violent act was motivated by personal reasons because no working relationship exists.⁵⁷

C. *Employer Sanctions Under the Occupational Safety and Health Act*

Employers are required by the Occupational Safety and Health Administration ("OSHA") to provide a workplace "free from recognized hazards that are causing or likely to cause death or serious physical harm to employees."⁵⁸ Civil sanctions are imposed on businesses that fail to comply with OSHA standards.⁵⁹ Although a 1995 OSHA decision did not extend the "recognized hazard" element to workplace violence, recent OSHA guidelines and increased publication of workplace violence statistics indicate that OSHA may be willing to recognize workplace violence as a sanctionable hazard.⁶⁰

If OSHA recognizes workplace violence, then employers who prohibit weapons could be eliminating foreseeable hazards.⁶¹ By prohibiting weapons, however, the employer could also be admitting that violence is foreseeable: "It's difficult to argue that the violence was not foreseeable because, in fact, the employer was taking specific steps to prevent violence in the workplace."⁶²

III. Legislative Guidance for Pennsylvania Business Owners Who Prohibit Weapons on Business Premises

Despite the risk of claims of negligent enforcement of weapons prohibitions or violations of OSHA guidelines, business owners increasingly prohibit employees and non-employees from carrying concealed weapons on business premises as a means of reducing the risk of liability.⁶³ Unlike business owners in other states, however,

56. *Kohler*, 615 A.2d at 31.

57. *But see* D'Gata Nat'l Inc. v. Workmen's Comp. Appeal Bd., 479 A.2d 98, 100 (Pa. Commw. Ct. 1984). An employee who provoked a robber by attempting to grab his gun was still covered by the Workmen's Compensation Act because no pre-existing animosity existed between the robber and the employee. *Id.* In D'Gata, however, the employer had the burden of demonstrating the "personal reasons" exception because it sought to deny the employee worker's compensation benefits. *Id.*

58. 29 U.S.C. § 654 (2002).

59. *See* Thompson, *supra* note 7, at 291.

60. *See* Mack, *supra* note 34, at 308-11.

61. *See* Dahl, *supra* note 11.

62. *Id.*

63. A year after Texas passed concealed weapons legislation, each of the state's twenty largest businesses had developed weapons prohibitions or were in the process of

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Pennsylvania business owners seeking to prohibit weapons from the business premises have no legislative guidance and no legal recourse against those who violate weapons prohibitions.

Statewide legislation allowing citizens to carry concealed weapons with a valid permit began in Florida in 1987 and rapidly spread throughout the United States.⁶⁴ Currently, all but seven states and the District of Columbia permit citizens to carry concealed weapons.⁶⁵

Concealed weapons legislation continues to provoke debate between citizens seeking to exercise their right to bear arms and gun control advocates seeking to preserve the public safety.⁶⁶ Proponents of concealed weapons legislation argue that citizens are entitled to exercise their constitutional right to bear arms, that weapons are essential for self-defense, and that permitting individuals to carry concealed weapons actually reduces crime.⁶⁷ Opponents argue that permitting concealed weapons leads to a “Wild West” mentality that increases the number of violent crimes committed using weapons.⁶⁸

doing so. *Id.*

64. *See id.*; *see also* Sam Verhovek, *Concealed-Weapon Backers Packing Wallop*, N.Y. TIMES, Mar. 7, 1995, at 11B.

65. *See infra* note 73. Vermont is the only state that does not require citizens to obtain a permit to carry a concealed weapon. VT. STAT. ANN. tit. 13, § 4003 (2002).

66. *See Mack, supra* note 34, at 285. Concealed weapons legislation also figures prominently in election debates. *See* James Dao, *In Hunter's Havens, Gun Control Is Risk for Gore*, N.Y. TIMES, May 13, 2000, at 1A; Thomas Fitzgerald, *Fisher Takes Aim at Rendell's Stand on Guns*, PHILA. INQUIRER, Oct. 9, 2002; Jim Yardley, *Bush Stand Is Used To Turn Election Into a Showdown*, N.Y. TIMES, Aug. 7, 2000, at 16A. The debate also resurfaced in the wake of the September 11 terrorist attacks. Applications for concealed weapons permits increased exponentially after September 11, 2001. *See* Jim Sloan & Patty Ryan, *100 Days*, TAMPA TRIB., Dec. 20, 2001, at Spec. 1. Firearms sales increased from 9 to 22 percent during September, October, and November of 2001. Al Baker, *A Nation Challenged: Steep Rise in Gun Sales Reflects Post-Attack Fears*, N.Y. TIMES, Dec. 16, 2001, at 1A. Gun manufacturers also began marketing a Homeland Security Model firearm for “our current time of national need.” *Id.* Proposed safety precautions that would allow airline pilots to carry weapons also sparked debate. *House Committee on Transportation and Infrastructure: Subcommittee on Aviation Meets To Mark up Legislation on Arming Pilots: Hearing on H.R. 4635*, 107th Cong. (2002).

67. NRA INST. FOR LEGIS. ACTION, RIGHT TO CARRY 2003 FACT SHEET (Jan. 10, 2003), available at <http://www.nra.org/FactSheets.asp?FormMode=Detail&ID=18&1=View>; *see* JOHN R. LOTT, JR., MORE GUNS, LESS CRIME (1998). Concealed weapons advocates also point to low crime statistics of permit holders to support their claim that concealed weapons carriers do not commit more crime. *See* Dan Harrie, *Crimes Trigger Revocation of 584 Concealed-Weapon Permits*, SALT LAKE TRIB., Mar. 25, 2002, at A1 (reporting that 1.3 percent of concealed weapons permit carriers in Utah commit serious crime while 4.1 percent of the general population nationally commit serious crime).

68. *See Mack, supra* note 34, at 286. “The citizens of this state do not want to return to the Tombstone era when everyone is allowed to carry a gun and disputes are settled by . . . whoever is the quickest draw.” Mark Katches, *Concealed Weapons Bill Killed, Senate Panel Defeats Measure that Would Ease Permit Criteria*, L.A. DAILY NEWS, July

A. Pennsylvania Concealed Weapons Legislation

As a “shall issue” state,⁶⁹ Pennsylvania issues concealed weapons permits to applicants without granting local officials discretion to deny a permit if an applicant fails to demonstrate a need for a concealed weapon.⁷⁰ “Shall issue” states employ the most “liberal” policy concerning the issuance of permits to carry concealed weapons.⁷¹ Unlike states that allow local discretion in issuing concealed weapons permits⁷² or jurisdictions that prohibit concealed weapons,⁷³ “shall issue” states issue concealed weapons permits to qualified applicants without requiring an applicant to demonstrate a need to carry a concealed weapon.⁷⁴

In Pennsylvania, the sheriff of each county “shall issue” a permit to

3, 1996, at N4. Gun control advocates argue that statistics showing decreases in crime rates after states institute concealed weapons legislation are merely a result of the national decrease in crime. *See Baker, supra* note 66.

69. “A license to carry a firearm . . . shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual whom no good cause exists to deny the license.” 18 PA. CONS. STAT. § 6109(e) (2002). A firearm is “[a]ny pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.” *Id.* § 6102.

70. *See Mack, supra* note 34, at 291.

71. *See id.* The following states have also enacted “shall issue” legislation: ALA. CODE § 13A-11-75 (1994); ALASKA STAT. § 18.65.700 (Michie 1995); ARIZ. REV. STAT. ANN. § 13-3112 (West 1996); ARK. CODE ANN. § 5-73-309 (Michie 1995); FLA. STAT. § 790.06 (1987); GA. CODE ANN. § 16-11-129 (1996); IDAHO CODE § 18-3302 (Michie 1996); IND. CODE ANN. § 35-27-2-3 (Michie 2001); KY. REV. STAT. ANN. § 237.110 (Michie 1996); LA. REV. STAT. ANN. § 40:1379.3 (1996); ME. REV. STAT. ANN. tit. 25, § 2003 (West 2002); MICH. COMP. LAWS § 28-422 (2001); MISS. CODE ANN. § 45-9-101 (1997); MONT. CODE ANN. § 45-8-321 (1995); NEV. REV. STAT. § 202.3657 (1995); N.H. REV. STAT. ANN. § 159.6 (1994); N.C. GEN. STAT. § 14-415.12 (1995); N.D. CENT. CODE § 62.1-04-03 (1995); OKLA. STAT. tit. 21, § 1290.12 (2002); OR. REV. STAT. § 166.291 (1989); S.C. CODE ANN. § 23-31-215 (Law. Co-op. 1996); TENN. CODE ANN. § 39-17-1351 (1989); TEX. GOV'T CODE § 411.177 (1996); UTAH CODE ANN. § 53-5-704 (2000); VA. CODE ANN. § 18.2-308 (Michie 1995); WASH. REV. CODE § 9.41.070 (1995); W. VA. CODE § 61-7-4 (1989); WYO. STAT. ANN. § 6-8-104 (Michie 1982).

72. *Mack, supra* note 34, at 292 n.32. States that permit discretion by requiring an applicant to “show cause” are the following: CAL. PENAL CODE § 12050 (West 1996); COLO. REV. STAT. ANN. § 18-12-105.1 (1996); DEL. CODE ANN. tit. 11, § 1441 (1995); HAW. REV. STAT. § 134-9 (1993); IOWA CODE § 724.11 (1996); MD. CODE ANN., CRIM. LAW § 4-101 (2002); MINN. STAT. § 624.714 (1997); N.J. STAT. ANN. § 2c:58-4 (West 1996); N.Y. PENAL LAW § 400.00 (McKinney 1996); R.I. GEN. LAWS § 11-47-11 (1994).

73. *Mack, supra* note 34, at 292 n.35. Jurisdictions prohibiting concealed weapons are D.C. CODE § 22-4504 (2001); ILL. COMP. STAT. ANN. 5/24-1 (West 1996); KAN. STAT. ANN. § 21-4201 (1996); MO. ANN. STAT. § 571.030 (West 1996); NEB. REV. STAT. § 28-1202(1) (1995); N.M. STAT. ANN. § 30-7-2 (Michie 1996); OHIO REV. CODE ANN. § 2923.12 (Anderson 1996); WIS. STAT. ANN. § 941.23 (West 1996).

74. *See* 18 PA. CONS. STAT. § 6106 (2002); *supra* note 71.

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carry a concealed weapon to any citizen who is at least twenty-one years of age and is not explicitly prohibited from obtaining a permit.⁷⁵ After conducting a background check,⁷⁶ the sheriff issues a permit valid for five years.⁷⁷ The permit may be revoked for good cause,⁷⁸ but no record of a citizen's application or revocation may be made public.⁷⁹

B Legislative Protections for Business Owners in Other "Shall Issue" States as a Model for Pennsylvania Legislation

Although Pennsylvania employs a "liberal" permitting policy, the Commonwealth differs from other "shall issue" states because it does not provide legislative guidance for business owners who want to prohibit the carrying of concealed weapons by employees or others entering the business premises. Other "shall issue" states grant express authority to business owners to prohibit weapons,⁸⁰ provide criminal sanctions for violators of weapons prohibitions,⁸¹ and allow employers access to records granting and revoking permits.⁸²

1. Express Legislative Authority To Prohibit Weapons

Prior to the enactment of concealed weapons legislation, business owners could prohibit both employees and non-employees from carrying weapons on the business premises as a reasonable safety measure.⁸³

75. 18 PA. CONS. STAT § 6109 (2002). Explicit prohibitions include persons convicted of certain crimes, illegal aliens, habitual drunkards, persons dishonorably discharged from the armed forces, and a person whose character and reputation indicate that the individual would act in a manner dangerous to the public safety. *See id.*

76. *Id.* § 6109(d).

77. *Id.* § 6109(f)(1).

78. *Id.* § 6109(i).

79. *Id.* § 6111(i).

80. "Shall issue" states that expressly grant business owners authority to prohibit weapons are the following: ARK. CODE ANN. § 5-73-306(B)(1) (Michie 1995); KY. REV. STAT. ANN. § 237.110(14) (Michie 1996); LA. REV. STAT. ANN. § 40:1379.3(o) (1996); MISS. CODE ANN. § 45-9-101(13) (1997); OKLA. STAT. tit. 21, § 1290.22 (2002); S.C. CODE ANN. § 23-31-215(R) (Law. Co-op. 1996); TENN. CODE ANN. § 39-17-1359 (1996); W. VA. CODE § 61-7-14 (1989). In Texas, only employers are legislatively authorized to prohibit concealed weapons. *See* TEX. GOV'T CODE § 411.203 (1996); Op. Tex. Att'y Gen. JC-0325 (2001).

81. *See* TENN. CODE ANN. § 39-17-1359 (1996); TEX. PENAL CODE § 30.06 (1996); W. VA. CODE § 61-7-14 (1989). *But see* KY. REV. STAT. ANN. § 237.110(14) (Michie 1996) (stating that violation of a weapons prohibition "shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer").

82. *See* LA. REV. STAT. ANN. § 40:1379.3(A)(2)(a) (1996); TEX. GOV'T CODE § 411.192 (1996). *But see* OKLA. STAT. tit. 21, § 1290.13 (2002) (stating that a list of concealed weapons permit holders may be accessed by law enforcement personnel for law enforcement purposes only).

83. *See* Dahl, *supra* note 11.

While business owners in some “shall issue” states were guided by legislation expressly granting them the right to prohibit weapons,⁸⁴ business owners in other “shall issue” states were left to question if they could prohibit weapons without express legislative authority to do so.⁸⁵

In states with legislation authorizing private property owners to prohibit concealed weapons, private property owners are required to post notices of the weapons prohibition.⁸⁶ In order to protect private property owners from claims that weapons prohibition notices were inadequately posted, the legislation often requires a specific size or wording of notices.⁸⁷

Business owners in Pennsylvania and other states that do not authorize private property owners to prohibit weapons, however, need

84. *See supra* note 80.

85. *See* Dahl, *supra* note 11. In addition to Pennsylvania, the following “shall issue” states do not expressly grant business owners the authority to prohibit weapons: Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Maine, Michigan, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Utah, Virginia, Washington, and Wyoming.

86. *See* ARK. CODE ANN. § 5-73-306(B)(1) (Michie 1995); KY. REV. STAT. ANN. § 237.110(14) (Michie 1996); MISS. CODE ANN. § 45-9-101(13) (1997); TENN. CODE ANN. § 39-17-1359 (1996); TEX. GOV'T CODE § 411.203 (1996).

87. Arkansas business owners must post a notice that is “clearly readable” at a distance of ten feet that reads, “[C]arrying of a handgun is prohibited.” ARK. CODE ANN. § 5-73-306(B)(1) (Michie 1995). Mississippi business owners must post a notice that is “clearly readable” at a distance of ten feet that reads, “[C]arrying of a pistol or revolver is prohibited.” MISS. CODE ANN. § 45-9-101(13) (1997). Tennessee business owners must comply with the following for a weapons prohibition to be enforceable:

Posted notices shall be displayed in prominent locations, including all entrances primarily used by persons entering the building If the possession of weapons is also prohibited on the premises of any such property . . . the notice shall be posted at all entrances to the premises that are primarily used by persons entering the property. The notice shall be in English but a notice may also be posted in any language used by patrons In addition to the sign, notice may also include the international circle and slash symbolizing the prohibition of the item within the circle. The sign shall be of the size that is plainly visible to the average person entering the building . . . and shall contain language similar to the following: “Pursuant to § 39-17-1359, the owner, operator of this property has banned weapons on this property, or within the building or this portion of this building. Failure to comply with this prohibition is punishable as a criminal act under state law and may subject the violator to a fine of not more than five hundred dollars (\$500).”

TENN. CODE ANN. § 39-17-1359 (1996); Op. Tenn. Att’y Gen. 00-161 (2000). Texas business owners may either provide notice by “a card or other document on which is written language identical to the following: ‘Pursuant to Section 30.06 Penal Code (trespass by holder of license to carry a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (concealed handgun law), may not enter this property with a concealed handgun’” or by a sign posted on the property that includes the above quoted language in both English and Spanish and “appears in contrasting colors with block letters at least one inch in height . . . and is displayed in a conspicuous manner clearly visible to the public.” TEX. PENAL CODE § 30.06 (1996).

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legislative guidance on how to prohibit weapons. Although no Pennsylvania court has addressed the issue, legal scholars analyzing similar legislation in other states unanimously conclude that private property owners may prohibit weapons without express legislative authority.⁸⁸ Pennsylvania business owners prohibiting weapons, however, lack uniform guidance on how to post weapons prohibitions. Without a statute specifying the legally sufficient method of posting, business owners could lose the protection from liability afforded by a weapons prohibition; injured parties could claim that an inconspicuous notice⁸⁹ amounts to a lack of a prohibition because concealed weapons carriers may not realize that they are prohibited from the premises.⁹⁰

However, legislation authorizing business owners to prohibit weapons and providing methods of notice posting could violate a citizen's right to bear arms under the Pennsylvania Constitution. Unlike the United States Constitution,⁹¹ Pennsylvania and forty-one other states'

88. See Mack, *supra* note 34, at 293-297; Dahl, *supra* note 11; Sylvia Moreno, *Bush Says Agencies Overreacting to Gun Law*, DALLAS MORNING NEWS, Dec. 1, 1995, at 1; Ed Vogel, *New Gun Law Now in Effect*, LAS VEGAS REV. J., Oct. 1, 1995, at B.

89. Business owners may post inconspicuous notices out of a fear that customers will think that the business premises is unsafe. See Matthew Dolan, *Panel Ok's Concealed Weapons in Bars*, VIRGINIAN-PILOT, Feb. 4, 2001, at A1.

90. See Thompson, *supra* note 7, at 299-300. This claim would most likely not apply to employees who carried a concealed weapon because published workplace safety policies would provide adequate notice. Policies should be "broad in focus incorporating all employment structures including those of subsidiaries and affiliates and also parking lots and employee vehicles in those lots. For purposes of clarity, the policy should contain a definition section defining such terms as 'employees,' 'weapons,' 'carrying,' and 'possessing' An employer who enacts a no-weapons policy and then fails to enforce and implement it properly may indeed aid a victim in proving that the employer's negligence was the proximate cause of the injury." *Id.* But see KY. REV. STAT. ANN. § 237.110(14) (Michie 1996) (prohibiting private employers from banning employees from carrying concealed weapons in employee-owned vehicles even if the vehicles are parked in the employer's parking lot).

91. The Second Amendment to the United States Constitution has traditionally been read to ensure only a collective right of the government to form a militia. *U.S. v. Miller*, 307 U.S. 174 (1939):

The Constitution as originally adopted granted to the Congress power—"To provide for calling forth the militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the militia according to the discipline prescribed by Congress." With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.

Id. at 178. For debate over whether the Second Amendment should be read to provide an individual right, see Symposium, *Is the Right To Bear Arms Individual, Collective, Insurrectionist, or Both?*, 10 SETON HALL CONST. L.J. 797 (2000).

constitutions either explicitly grant or are consistently interpreted to grant a fundamental, individual right to bear arms.⁹² The Pennsylvania Constitution provides: “The rights of the citizens to bear arms in defense of themselves and the State shall not be questioned.”⁹³

Unlike other states specifically authorizing private property owners to prohibit concealed weapons, Pennsylvania does not authorize the legislature to regulate the carrying of weapons in its “right to bear arms” constitutional provision.⁹⁴ In Nevada, a state whose constitution does not authorize the legislature to regulate the carrying of weapons,⁹⁵ legislators rejected a provision of the concealed weapons legislation authorizing private property owners to prohibit weapons.⁹⁶ The Nevada Senate Judiciary Committee feared that the provision would subject legislators to lawsuits accusing them of infringing upon citizens’ right to bear arms.⁹⁷

However, Pennsylvania courts, unlike those in Nevada, recognize

92. David B. Kopel, *What State Constitutions Teach About the Second Amendment*, 29 N. KY. L. REV. 823, 846 (2002). The Second Amendment to the United States Constitution is not applicable to the states. *U.S. v. Cruikshank*, 92 U.S. 542, 553 (1875). “The Second Amendment declares that [the right to bear arms] shall not be infringed; but this . . . means no more than it shall not be infringed by Congress.” *Id.*

93. PA. CONST. art. 1, § 21. “The ownership of firearms is constitutionally protected [and therefore] its regulation is a matter of statewide concern.” *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996) (invalidating a ban on assault weapons enacted by municipalities).

94. See Kopel, *supra* note 92, at 824-44. “All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: the right of enjoying and defending their lives and liberties . . . Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.” KY. CONST. BILL OF RIGHTS § 1. “The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.” LA. CONST. art. I, § 11. “The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called into question, but the legislature may regulate or forbid carrying concealed weapons.” MISS. CONST. art. III, § 12. “The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons.” OKLA. CONST. art. II, § 26. “That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.” TENN. CONST. art. I, § 26. “Every citizen shall have the right to keep and bear arms in the lawful defense of himself and the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.” TEX. CONST. art I, § 23.

95. “Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes.” NEV. CONST. art. 1, § 11(1).

96. Vogel, *supra* note 88.

97. *Id.*

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that the individual right to bear arms is subject to reasonable regulation in order to preserve public safety.⁹⁸ Legislation granting business owners the discretion to prohibit concealed weapons and giving guidance to those who choose to do so could be regarded as a reasonable regulation promulgated to preserve public safety.

Like Pennsylvania, West Virginia recognizes that the right to bear arms may be limited by reasonable regulations so long as those regulations are not overly broad.⁹⁹ Although West Virginia's constitution, like Pennsylvania's, does not grant the legislature power to regulate the carrying of weapons,¹⁰⁰ West Virginia's concealed weapons legislation authorizes private property owners to prohibit weapons.¹⁰¹ West Virginia's legislation permitting private property owners to prohibit concealed weapons, passed in 1989, has yet to be challenged under the state's right to bear arms provision.¹⁰²

2. Criminal Sanctions for Violators of Weapons Prohibitions

Pennsylvania business owners also need legislation subjecting violators of concealed weapons prohibitions to criminal sanctions. Other "shall issue" states recognize that criminal sanctions are necessary to ensure that business owners can adequately enforce weapons prohibitions.¹⁰³ Without criminal sanctions, a business owner would have to enforce the prohibition by herself and could face liability for

98. "That the right to bear arms, guaranteed by the [Pennsylvania] Constitution is not an unlimited right is almost universally accepted. A reasonable regulation in a gun control law is a valid exercise of the police power of the Commonwealth prescribing for the good order and protection of its citizens." *Commonwealth v. Ray*, 272 A.2d 275, 279 (Pa. Super. Ct. 1970), *vacated on procedural grounds*, 292 A.2d 410 (Pa. 1972); *see, e.g., Gardner v. Jenkins*, 541 A.2d 406, 409 (Pa. Commw. Ct. 1988). The majority of other states interpreting similar constitutional provisions agree that legislation regulating the right to bear arms must be reasonable to be a valid exercise of police power. *Arnold v. Cleveland*, 616 N.E. 2d 163, 172 (Ohio 1993); *see also Jones v. Arkansas*, 862 S.W.2d 273, 275 (Ark. 1993); *Robertson v. City & County of Denver*, 874 P.2d 325, 329 (Colo. 1994) (citations omitted); *Masters v. Texas*, 653 S.W.2d 944, 946 (Tex. Ct. App. 1983); *City of Princeton v. Buckner*, 377 S.E.2d 139, 143 (W. Va. 1988).

99. *See City of Princeton*, 377 S.E.2d at 142. The West Virginia Supreme Court held unconstitutional legislation that both prohibited carrying a concealed weapon and failed to provide citizens with a means to obtain a permit. *Id.* at 149.

100. "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use." W. VA. CONST. art. III, §22.

101. "[A]ny owner, lessee, or any other person charged with care, custody and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain." W. VA. CODE § 61-7-14 (2002).

102. *See id.*

103. This recognition is evidenced by the fact that states providing criminal sanctions require that those criminal sanctions be included in the weapons prohibition notice. *See TENN. CODE ANN. § 39-17-1359* (1996); *TEX. PENAL CODE § 30.06* (1996); *W. VA. CODE § 61-7-14* (1989).

false imprisonment or assault.¹⁰⁴ A business owner could be liable for false imprisonment if she seizes a concealed weapon or otherwise detains the prohibition violator.¹⁰⁵ If the business owner attempts to forcibly remove the violator, she could be liable for civil assault or perhaps face criminal assault charges.¹⁰⁶

In Texas, violators of weapons prohibitions commit criminal trespass.¹⁰⁷ Although Texas only explicitly authorizes employers and not all private property owners to prohibit weapons,¹⁰⁸ a criminal statute authorizes all property owners to bring a criminal trespass action against violators of weapons prohibitions.¹⁰⁹ The property owner or her authorized representative must have posted statutorily adequate notice in order for the violator to be convicted of criminal trespass.¹¹⁰

In Tennessee and West Virginia, violators of concealed weapons prohibitions can be charged with a misdemeanor.¹¹¹ Tennessee imposes a five hundred dollar fine,¹¹² and West Virginia imposes up to a one thousand dollar fine or six months in the county jail.¹¹³ In West Virginia, business owners must first ask the concealed weapons carrier to relinquish the weapon or to exit the business premises.¹¹⁴

Pennsylvania business owners need criminal sanctions against violators of weapons prohibitions. Under the current criminal statutes, a concealed weapons carrier must intend to use the weapon in a criminal act before the carrier commits a crime.¹¹⁵ Not all violators of weapons prohibitions will have a criminal intent.

Pennsylvania business owners could not post notices that prohibition violators commit criminal trespass because it remains unclear whether a violator of a weapons prohibition could be charged with criminal trespass under current Pennsylvania law. Although violators enter the premises despite the business owner's communication that concealed weapons are prohibited,¹¹⁶ it is a defense to criminal trespass if

104. See Op. Tex. Att'y Gen. DM-363 (1995).

105. *Id.*

106. *Id.*

107. See TEX. PENAL CODE § 30.06 (1996).

108. See TEX. GOV'T CODE § 411.203 (1996).

109. See TEX. PENAL CODE § 30.06 (1996); Op. Tex. Att'y Gen. JC-0325 (2001).

110. TEX. PENAL CODE § 30.06 (1996).

111. TENN. CODE ANN. § 39-17-1359 (1996); W. VA. CODE § 61-7-14 (1989).

112. TENN. CODE ANN. § 39-17-1359 (1996).

113. W. VA. CODE § 61-7-14 (1989).

114. *Id.*

115. See 18 PA. CONS. STAT. § 907 (2002). An individual carrying a concealed weapon with the intent to use it criminally commits a misdemeanor. *Id.*

116. "A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice to trespass is given by . . . actual communication to the actor . . . [or] posting in a manner prescribed by law or

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the premises are open to the public and the individual complies with all lawful conditions imposed on access to the premises.¹¹⁷ Because private property owners in Pennsylvania are not explicitly authorized by law to prohibit weapons, a violator could argue that she complied with all conditions imposed by law and only violated a condition imposed by an individual.¹¹⁸

3. Access to Records Granting and Revoking Permits

Business owners who prohibit employees from carrying concealed weapons should enforce that prohibition by requiring prospective and current employees to disclose if they possess a concealed weapons permit or have had a permit revoked.¹¹⁹ In Pennsylvania, however, employers cannot access permit information and therefore cannot verify information provided by employees.¹²⁰

Texas employers can verify concealed weapons permit information provided by employees through the Texas Department of Public Safety.¹²¹ Upon a written request and the payment of a reasonable fee, any individual can verify whether any other individual possesses a concealed weapons permit.¹²² Under the Texas Open Records Act, employers can also obtain the identities of individuals who have had a permit suspended, denied, or revoked.¹²³

Pennsylvania employers need legislation similar to that in Texas. Without legislation granting access to permit information, employers cannot adequately enforce a weapons prohibition because they are unable to verify permit information provided by employees. The current confidentiality legislation in Pennsylvania prevents employers from conducting adequate background checks; as a result, employers are left vulnerable to a claim of negligent hiring, supervision, or retention.¹²⁴

reasonably likely to come to the attention of intruders.” *Id.* § 3503(b).

117. *Id.* § 3503(c)(2).

118. In Kentucky, prohibition violators cannot be charged with any crime. KY. REV. STAT. ANN. § 237.110(14) (Michie 1996).

119. See Dahl, *supra* note 11.

120. See 18 PA. CONS. STAT. § 6111(i) (2002). “All information provided by . . . any applicant for a license to carry a firearm under section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, state or local government agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, and reasonable attorney fees.” *Id.*

121. TEX. GOV'T CODE § 411.192 (1996).

122. *Id.* The Department of Public Safety must also notify any permit holder of the identity of the person or agency requesting the permit information. *Id.*

123. See Dahl, *supra* note 11.

124. See *supra* Part II.A.2. and accompanying notes.

IV. Conclusion

As incidents of workplace violence gain greater media attention, business owners seek to prevent violence by prohibiting weapons on the business premises. By prohibiting weapons, business owners may also decrease their risk of liability. Although business owners who inadequately enforce a weapons prohibition could be held liable, prohibiting weapons decreases the chance that a weapons-related injury will occur and demonstrates a reasonable attempt to protect customers and employees.

Pennsylvania business owners who prohibit weapons need legislative guidance. In order to adequately implement and enforce a weapons prohibition, business owners need explicit authority to prohibit weapons, guidelines for notice posting, criminal sanctions against violators of prohibitions, and access to permitting information.

However, even with legislative guidance business owners must still seek practical methods of carrying out a weapons prohibition. Will concealed weapons carriers be permitted to “check” their weapons at the door?¹²⁵ Should employers provide employees with lockers to store their weapons? Will business owners be forced to hire full-time security personnel to detect prohibition violators?

Ultimately, business owners face legal uncertainty in the wake of concealed weapons legislation. Legislative guidance will be the first but perhaps the most important step in protecting Pennsylvania business owners. With legislation as proposed in this Comment, Pennsylvania business owners will finally have the same protection as business owners in other “shall issue” states.

125. See Dahl, *supra* note 11.