

► Insurance Concerns and **WISCONSIN'S** New Concealed Carry Weapon Law

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EFFECTIVE NOVEMBER 1, 2011, WISCONSIN LAW WILL ALLOW A PERSON TO CARRY A CONCEALED HAND GUN IF THAT PERSON OBTAINS A CONCEALED CARRY WEAPONS LICENSE. THERE ARE A NUMBER OF REQUIREMENTS IN ORDER TO OBTAIN SUCH A LICENSE; AND EVEN WHERE A LICENSE IS OBTAINED, PERSONS CAN BE PROHIBITED FROM CARRYING CONCEALED WEAPONS IN CERTAIN CIRCUMSTANCES.

Business or property owners may prohibit persons from carrying weapons on their property. (There are special rules applicable to governmental entities and their properties; and those rules are not the subject of this article.) Businesses, property owners or other occupiers of property can exclude weapons provided they post an appropriate sign. The sign must be at least 5x7 inches and contain appropriate language indicating weapons are prohibited from the particular property. The sign has to be posted near each entrance of the structure. The new law raises several questions about liabilities, and insurance coverage if someone is injured by a concealed weapon brought upon the property. The law contains provisions which confer "immunity." Property owners or occupants that do **not** prohibit an individual from carrying a concealed weapon on their property are "immune from any liability arising from its decision." This grant includes business owners, or other occupier's property. The language seems to insulate the property owner/occupier from virtually all liability for injuries sustained by a third party as a result of the decision, intentional or otherwise, to allow weapons on the premises, even if that decision was negligently made. Assume there is a business where an employee carries a concealed weapon. While at work, the weapon falls out of the concealed carry device, discharges and wounds a customer. If the place of business did not prohibit concealed carry, then the business owner is "immune from any liability arising out

of its decision." This would grant immunity in the foregoing circumstance. (It is doubtful that this immunity would extend to the employee who dropped the hand gun in the foregoing example; and given the immunity granted the employer, the employer's CGL may not provide coverage to the employee if it is determined that the incident occurred outside of the scope of employment.) However, if the business owner had a concealed carry policy that prohibited weapons, then it has no such immunity. In such event, the injured customer could sue the business owner for negligence in failing to reasonably administer its no-weapons policy (e.g., the business took no steps to enforce the policy when it knew or should have known the employee was violating the policy.)

Businesses and other property owners who are attempting to decide whether or not to prohibit concealed carries also have concerns relative to whether or not there is insurance coverage if someone is injured by a concealed weapon. The new concealed carry law does not create any new liabilities for business owners or other property owners. Rather, it simply allows greater opportunity for businesses and owners to be negligent if they prohibit concealed carry handguns. But – what about insurance coverage for such negligence? At this time, it does not appear that there are any commercial general liability policies or home owners policies that contain specific exclusions of coverage for damages arising out of the

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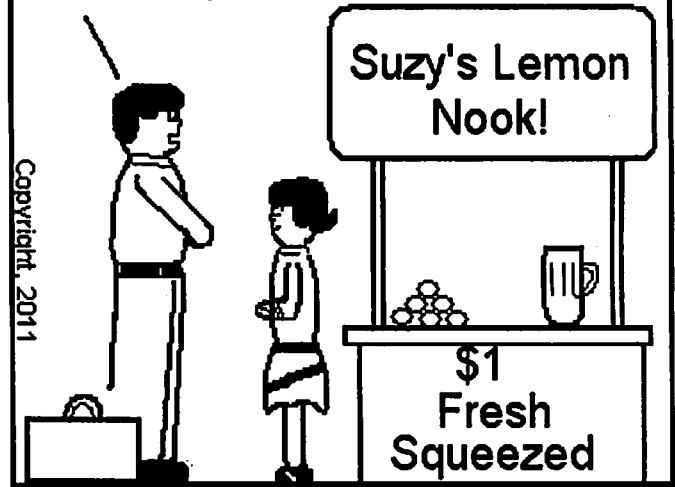
negligence associated with a weapon, be it concealed or otherwise. Most of these policies simply cover claims of ordinary negligence associated with use of the weapon. Whether or not the insurance industry will change in the future to attempt to carve out coverage is unknown. In the absence of change in policy coverage, it would appear that most home owners policies and CGL's that are currently being used in the industry, would provide coverage for a business owner or property owner, if a claim was made by an injured party that somehow or another there was negligence involved by the owner in either administrating or enforcing policies prohibiting weapons. Nevertheless, you should check with your agent to see if your policy has any limitations or restrictions on coverage relating to negligence claims arising out of the use or possession of weapons. This will give you peace of mind. ■

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