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Risk Management Association**



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In the Line of Fire: Recent Legislation Puts Target on Municipal Firearm Regulations

By: Siana, Bellwoar & McAndrew, LLP

In light of recently-enacted legislation, Pennsylvania municipalities should carefully assess whether their municipal codes contain regulations of firearms that are prohibited by state law. On November 6, 2014, Governor Corbett signed House Bill 80 into law, which amends the Pennsylvania Uniform Firearms Act ("UFA"). Pursuant to this new legislation, individuals and member organizations (such as the NRA) are explicitly given legal standing to sue municipalities that restrict certain aspects of firearm ownership. Importantly, these individuals and member organizations will now have the right to recover attorneys' fees if successful. While this legislation is being challenged, it resurrects the issue of how, if at all, municipalities can regulate firearms.

What types of municipal firearm regulations are prohibited by HB 80 and the Uniform Firearms Act?

The UFA has been in place for several years, limiting the ability of municipalities to regulate certain aspects of firearms. It is noteworthy that HB 80 does not change the scope of the existing restrictions on municipal firearm regulations set forth in the Act. It instead provides a heavy hammer for plaintiffs to wield in attacking member regulations (by providing for the recovery of attorneys' fees) and it provides groups such as the NRA with standing to bring the claims (a previously disputed legal issue).

It is notable that HB 80 is being challenged through a lawsuit filed by the Cities of Philadelphia, Pittsburgh and Lancaster (among others). These challengers claim that HB 80 is invalid as it violates the single-subject rule under the Pennsylvania Constitution. It is unclear how this litigation will proceed or whether it will be successful. The Pennsylvania Attorney General has reportedly advised that she will not defend the law, and Governor-elect Wolf has previously indicated that he does not support the law. Importantly, however, the legislation

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John Johns, PIRMA Loss Control Manager, presents a 2014 Risk Management Award to Lisa Boyd, the manager of Strasburg Borough in Lancaster County. The award is for Strasburg's loss experience and use of PIRMA's risk management resource library.

Slips, Trips & Falls – They are no laughing matter, stay alert and watch where you are going!

When we think of workers who are injured or killed in a job-related fall, we often think of construction workers sliding off of roofs, falling from scaffolding or stepping into floor or skylight openings. While falls are very common in the construction industry, they also account for thousands of injuries among employees working in general industry. Surprisingly, many of these falls are falls on the same level—often a result of tripping or slipping on a walking surface.

In many cases, workers are rushing around or simply not paying attention to where they are going. While moving from one place to another, their distraction increases the risk of slipping, tripping or falling. It may be impossible to stay on alert every minute of every day, but there are ways to reduce your risk of these hazards. Simply paying attention and avoiding running, for example, can help you stay on your feet.

In addition to slowing down and paying attention, there are some other steps you can take to minimize your risk of falling. For example, watch out for wet surfaces and clean up any spills you notice. Be careful when walking on uneven surfaces and when using a step stool or ladder. Wear slip-resistant shoes. These are the kinds of simple things that can make a big difference.

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Keep in mind that slip, trip and fall hazards are everywhere—both on and off the job. Be sure to take fall prevention tips home with you to help keep you and your family safe.

FALL RELATED FACTS AND FIGURES

- According to the Bureau of Labor Statistics, about 300,000 work-related fall injuries occur each year. This results in more than 1,300 fall-related worker fatalities each year.
- Falls rank in the top three most common causes of injury seen in hospital emergency rooms.
- For every 100,000 people, seven die from fall injuries (on and off the job) in the United States every year.
- According to the Centers for Disease Control and Prevention, more than 30% of adults over the age of 65 fall each year. Falls are the leading cause of injury-related deaths.
- One-third of patients treated in hospital emergency rooms for injuries sustained in falls are children.
- Wear sturdy, slip-resistant shoes.
- Use hand rails when going up or down stairs.
- Whenever possible, walk instead of running.
- Use extra care when walking on uneven floor surfaces.
- If you notice a spill, clean it up immediately.
- Exercise regularly to improve your balance.
- Use proper lifting techniques, including making sure the load you are carrying is well balanced and that you can see over it.
- When ascending or descending a ladder, keep at least one hand on the ladder at all times and make sure the ladder is set up on a level surface.
- Never allow trash or other debris to pile up where it could present a tripping hazard.
- Use caution when working on elevated surfaces.

WHAT CAN YOU DO TO HELP PREVENT SLIP/TRIP/FALL INJURIES?

Roads and Guiderails

There are some items that generally are not covered by your property insurance. The usual items we receive inquiries about are roads, guiderails, and land. There are a number of reasons why these items are not usually the subject of property insurance. Of the most important issues is that all of these items would need to be scheduled for replacement value. This usually makes coverage cost prohibitive since they are spread out and not subject to total loss.

If you have a claim caused by a third party, such as a driver hitting a guiderail, we have a sample letter and can help with recovery from the third party.

Revised PIRMA Intergovernmental Contract

PIRMA members have been receiving a revised Intergovernmental Contract that should be signed and returned to H.A. Thomson Company. The PIRMA Contract was last updated in 1996 and the Board felt it was time to revise the contract to eliminate no longer needed provisions and incorporate the property and liability operations into one document. A black line comparison document is available upon request.



Contracts

Contracts members enter into often contain important language regarding risk management and coverage issues. Often Members do not think to either send their contracts to us for review of this language or they execute the contract and then send it in.

There are several coverage items to review in a contract. Often a contract will contain hold harmless, defense, and indemnification language. Hold harmless language attempts to remove responsibility from a contracting party. Defense and indemnification language require the designated party to provide defense (i.e. pay for a lawyer) and pay for damages that the other party may suffer. Occasionally, contracts we review require defense and indemnification of the other party even if the injury or damage suffered is due to the negligence of the other party. These agreements, especially granting broad defense and indemnification increase exposure and claims. Ultimately they can lead to higher coverage costs.

Contracts will also contain requirements for certain types and limits of insurance coverage. Usually they will ask for a party to be named as additional insured on the other's coverage. Evidence of coverage such as an insurance certificate is usually required.

Please send your contracts in for review and do not enter into new agreements without having your agent review the insurance language.

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remains in place during the challenge and the potential for an award of attorneys' fees remains a pressing consideration as to whether your regulations are valid.

The Uniform Firearm Act does not necessarily prohibit all firearm regulations, although its scope is very broad. Section 6120(a) of the UFA provides that "no county, municipality or township may in any manner regulate the lawful OWNERSHIP, POSSESSION, TRANSFER OR TRANSPORTATION of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth." (Emphasis supplied). Any such regulations are prohibited by state law and are invalid.

Individuals and gun rights advocacy organizations have challenged various municipal regulations that prohibit the ownership, possession or sale of certain types of firearms. For example, in *National Rifle Association v. City of Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009), the NRA filed an action to invalidate Philadelphia city ordinance regulations of the sale or possession of handguns and assault rifles. The Commonwealth Court held that these regulations were prohibited by the UFA (while deferring on the validity of certain aspects of Philadelphia's gun regulations on the basis that the NRA did not have standing). Note that the standing issue is now settled with the enactment of House Bill 80 - granting standing to such member organizations.

Also, in *Dillon v. City of Erie*, 83 A.2d 467 (Pa. Cmwlth. 2014), the Pennsylvania Commonwealth Court recently struck down a City of Erie regulation that prohibited gun possession in a city park. Mr. Dillon had obtained a permit to hold a pro-gun rally in a city park, but was advised by the city that carrying a firearm to the rally would violate city



ordinances (which prohibited firearm possession and hunting in city parks). The Commonwealth Court disagreed with the City, holding that the prohibition of firearm possession at the rally was invalid.

What types of municipal firearm regulations are permissible?

While the UFA is broad with respect to the types of municipal firearm regulations that are prohibited, credible arguments can be made that some regulations remain viable. As noted above, the UFA prohibits regulation of: ownership; possession; transfer; or transportation. Absent from this list, however, is firearm DISCHARGE. The absence of "discharge" raises the issue of whether municipalities can regulate hunting, non-hunting-related firearm discharge and zoning for gun ranges. These issues have not been explicitly addressed in the context of the UFA, but have been addressed by the courts in other contexts.

With respect to hunting, certain types of municipal hunting regulations have withstood scrutiny and others have been stricken. The UFA's prohibition on municipal firearm regulation has not come into play. Instead, the case law has focused on whether such regulations are preempted by the Pennsylvania Game Code. On the one hand, the Commonwealth Court in *Wolfe v. Township of Salisbury*, 880 A.2d 62 (Pa. Cmwlth. 2005), held that a township was entitled to regulate hunting on municipal-owned land, and was not

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otherwise preempted from doing so by the Game Code. The Court noted that, as a property owner, the Township has a right to control hunting on its property.¹

On the other hand, general hunting regulations applicable throughout a municipality are only valid to the extent that they are not inconsistent with the Game Code. In *Duff v. Township of Northampton*, 532 A.2d 500 (Pa. Cmwlth. 1987), the Court held that a township's establishment of a safety zone more restrictive than the safety zone established in the PA Game Code was invalid and preempted.

With respect to municipal regulation of shooting ranges, the case law is similarly nuanced. This issue was addressed in *Baird v. Township of New Britain*, 633 A.2d 225, 226-27 (Pa. Cmwlth. 1993). In *Baird*, the township enacted an ordinance prohibiting the discharge of any firearm within the Township. The ordinance specifically exempted hunting and other activities regulated by the PA Game Code, as well as certain types of target shooting on parcels greater than ten (10) acres. Mr. Baird, a big game hunter, set up a shooting/target range on his property, backstopped with timber frames and a large mound of dirt. He claimed that his use of the range was for hunting purposes and that the Game Code preempted the local regulations.

The Commonwealth Court held otherwise. It found that the Township provisions were not invalid and were not preempted by the PA Game Code given that the Code only regulates the discharge of firearms relating to hunting and target shooting during open hunting season - not the discharge of firearms in general. The Court concluded that the Game Code does not encompass all forms of firearm discharge and that municipal regulation was therefore not preempted.

It remains to be seen, however, whether a challenge will or could be successfully brought to these regulations. An argument could be made that a general prohibition on the discharge of a firearm is overly broad if it criminalizes, restricts or prohibits the legal use of a firearm (in self-defense, for example) as an implicit extension of the prohibition under the UFA to own and possess a firearm. Of course, such a reading could call into question a variety of other municipal regulations, including general zoning regulations that only allow shooting ranges in designated zoning districts.

If you have any questions about how the Legislation affects your municipality and whether you should amend, enact or repeal an ordinance, rule or regulation accordingly, the attorneys at Siana, Bellwoar & McAndrew LLP would welcome the opportunity to speak with you.

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¹ The Dillon matter may call this decision into question, but the Wolfe holding appears to remain valid. In *Dillon*, *Dillon* challenged the City ordinance that prohibited firearm possession and hunting in city parks. The Commonwealth Court's decision, however, only focused on the prohibition of firearm possession. A footnote toward the end of the *Dillon* decision suggests that municipalities remain able to control hunting on municipal-owned property as part of the municipality's proprietary functions as a landowner.

Online Resource Library

Access and Registration

- Log onto your Pool's Website
- Click "Loss Control Resource Library"
- **Not Yet Registered?** Click on "Register" and complete the registration form. Once membership has been verified, you will receive an Activation Notice by e-mail containing your username and password.
- **Already Registered?** Simply enter your username and password, then click "Login".
- **Forgot Password?** Click on "Forgot Password" and enter your e-mail address. Once your e-mail address has been verified, your username and password will be e-mailed to you.

Search Function

The entire site is searchable from the home page. For example, if you are not certain of the location of your resource, merely type in the topic, such as "fire" (less is more), in the search field. All resources with the word "fire" in the title or description will be listed.

(Please note the content disclaimer.)

SECTION 1 - MULTIMEDIA LIBRARY

Access thousands of videos and DVDs at no cost to you. Requested resources arrive in the mail, use them for up to 14 days, then simply return them in the postage-paid envelope provided.

SECTION 2 - VIDEO STREAMING

NEW FEATURE! Access nearly 300 safety videos from any computer that has a web browser. Video streaming offers the benefit of viewing them at your convenience.

SECTION 3 - DOCUMENTS LIBRARY

Download, save and customize thousands of Loss Control documents including articles, manuals, checklists, policies, procedures, and much more!

SECTION 4 - PRESENTATION LIBRARY

Download, save and customize hundreds of PowerPoint training presentations. Many of the PowerPoint presentations also contain speaker notes.

SECTION 5 - TRAINING LIBRARY

Access more than 500 Online Training Courses available to Members 24 hours a day, 7 days a week.

SECTION 6 - RECOMMENDED LINKS

Obtain numerous links to web sites for safety, loss control and risk management organizations, agencies, services, associations, and products.

PIRMA Service Providers

Marketing and Loss Control - H.A. Thomson Company

General Counsel - Siana, Bellwoar & McAndrew, LLP

Auditing - Plante & Moran, PLLC

Claims Service Provider - Integrated Risk Management

Administration - York Risk Pooling

Investment Manager - Wilmington Trust

Police Manual Available

A sample Police Manual is available from PIRMA. Please contact us if you are interested in receiving a copy on CD. Call Scott Miles at 1-800-362-1011 with any questions or to request a copy.

PIRMA's Newest Member

- Bastress Township, Lycoming County

Over 650 Members throughout the Commonwealth!

Comments & Questions

Please send your comments or questions to Andrew DiProspero at adiprospero@hathomson.com.