

PUBLICATION

Tennessee Employers Can Continue to Prohibit Guns Without New Liability

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On July 1, 2016, [Senate Bill 1736](#) went into effect in Tennessee. The law, introduced on January 15, 2016, was the subject of significant controversy. As the first of its kind across the country, SB 1736 as introduced sought to create a duty of care for property owners or entities who decided to prohibit the possession of firearms on the property as provided in Tenn. Code Ann. § 39-17-1359. The bill initially provided that any entity prohibiting firearms on its premises "assume[d] absolute custodial responsibility for the safety and defense of" any concealed handgun permit holder who was disarmed while on the premises. The bill created a cause of action against any such entity by a concealed handgun permit holder who suffered bodily injury or death while disarmed. In other words, the bill appeared to incentivize employers and business owners to roll back gun-free zones by creating new liability for property owners who chose to keep otherwise lawful gun-free zones in place. Further, the bill appeared to place an even greater duty of care on employers and business owners to protect concealed handgun permit holders on the premises than the general public.

On March 16, 2016, SB 1736 was completely gutted and amended. The March 16 amendment resulted in the final version of the law that is in effect today. The law, as enacted, creates no new liability for employers or business owners, and instead grants immunity for businesses from a lawsuit asserting liability for the failure to ban guns:

(a) A person, business or other entity that owns, controls or manages property and has the authority to prohibit weapons on that property by posting, pursuant to § 39-17-1359, shall be immune from civil liability with respect to any claim based on such person's businesses, or other entity's failure to adopt a policy that prohibits weapons on the property by posting pursuant to § 39-17-1359.

(b) Immunity under this subsection (a) does not apply to a person, business or other entity whose conduct or failure to act is the result of gross negligence or willful or wanton misconduct.

In other words, a business that chooses not to ban guns on its premises when it could otherwise do so cannot be sued for refusing to ban guns, such as where someone is injured by a concealed handgun permit holder in a facility that permits concealed handguns. The law protects a business's right to allow guns on its premises, but it does contain an exception to the immunity where the conduct or failure to act is the result of gross negligence or willful or wanton misconduct.

Given the complete about-face with the amendment to SB 1736, coverage of the bill has been confusing and often erroneous. Many news organizations continued to report that the law created new liability for employers and businesses even after its July 1 effective date. However, the law signed by Governor Haslam on April 27, 2016, is quite simple. For now, employers and business owners who prohibit guns need not worry about additional statutory liability because they choose to have such policies. And employers and business owners who choose to allow guns likewise need not fear additional liability because of their decision to allow firearms. Still, employers and business owners should keep a watchful eye, as the legislature is likely to consider further gun legislation in future sessions.