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Gun-liability laws won't help

By Paul Tetrault and Robert Detlefsen

Searching for solutions to gun violence, some commentators and politicians propose legislation requiring all firearm owners to buy gun-liability insurance. Such bills, already introduced in a few Northeastern states, including Massachusetts and Connecticut, would require a person to show proof of coverage to legally own or buy a firearm.

Proponents of these measures frequently compare firearms to automobiles. They note that nearly every state requires motorists to carry auto-liability insurance because cars can harm others if operated negligently or otherwise improperly. Since the same is true of guns, it is argued, gun owners should likewise be required to carry liability insurance to compensate those whom their weapons might harm.

This reasoning elides an important distinction between guns and cars - unlike driving a car, owning a gun is constitutionally protected. A law that conditions the exercise of a constitutional right on buying insurance is unlikely to survive judicial scrutiny. Moreover, it's a safe bet that those illegally owning guns would refuse to comply with a gun-insurance requirement, just as millions of motorists ignore mandatory car-insurance laws. In addition, the arguments for mandatory gun-liability insurance fail because they fundamentally misunderstand liability insurance.

Liability insurance compensates individuals harmed by the policyholder's conduct, but only if the act that caused the harm is accidental rather than intentional. A physician who buys medical-malpractice-liability insurance will be covered if she or he harms her patient because of negligence. Likewise, automobile-liability insurance will cover the policyholder who accidentally crashes into another vehicle. But if a physician intentionally harms her patient, or if a driver succumbs to road rage and deliberately rams another vehicle, neither will be covered by their liability-insurance policies.

There are two reasons why liability-insurance contracts exclude coverage for intentional acts.

First, insurers can use historical data to predict the frequency and severity of chance events, but they cannot predict whether someone will consciously choose to harm another person.

Second, even if it were actuarially possible to assess and price the risk that a policyholder will intentionally harm others, having the ability to insure against losses caused by one's own intentional conduct could actually increase the incidence of violent assaults. A malicious person is more likely to deliberately harm someone if he or she knows that liability insurance will save him or her from bearing the full economic cost of the damage he or she inflicts.

Proponents of mandatory gun-liability insurance suppose that insurers could omnisciently distinguish low-risk gun owners from high-risk ones, and price coverage accordingly. They assume that risk-based pricing will incentivize gun owners to take precautions to reduce the likelihood of an accidental shooting and to eschew especially dangerous guns. But accidental shootings that cause death or injury are

fortunately rare enough that insurers don't have enough claims data to justify discriminating among various types of guns, gun-storage techniques, or gun owners.

Statistics on non-fatal accidental shootings are hard to come by, but the National Center for Health Statistics reports that in 2010, gun-related accidents were responsible for 851 deaths in the U.S., compared with 3,555 deaths from drowning and 26,631 deaths from falls. With respect to injuries and deaths caused by auto accidents, insurers have mountains of data from which to identify dozens of risk factors.

With so few gun-related accidents that result in liability for the gun owner, no wonder that many homeowners insurance policies already include gun-liability coverage at no extra charge. Accidents involving guns do happen, and when they do they typically trigger insurance coverage. But compared with other events that result in liability - such as accidents involving backyard swimming pools, trampolines and even dog bites - gun-related accidents are very rare. So they do not significantly affect the cost of insurance.

At least one legislative proposal filed in recent weeks seems to recognize the distinction between accidents and intentional acts. A New York bill would require gun owners to buy coverage for "any damages resulting from any negligent or willful acts," notwithstanding that such coverage is not available to buy in the private marketplace.

Insurance is essentially a risk-transfer mechanism, and no private insurer wants to assume the risk that its policyholder will intentionally commit violence and destruction. Because liability insurance necessarily covers accidents only, mandatory gun-liability insurance will do nothing to curtail violent assaults committed with guns.

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