

# FIREARMS LIABILITY INSURANCE: “POLL TAX” FOR FIREARMS

- A firearms liability insurance mandate is a gun ban because no such policy exists.
- This is equivalent to a “Poll tax” on Second Amendment rights.
- Criminals won’t purchase insurance to cover their illegal firearms.

Supporters of strict gun restrictions have long promoted a parallel between car and gun ownership in order to justify licensing and registration schemes. Now they’re going a step further with proposals to mandate liability insurance for gun owners allegedly to provide insurance for victims of “gun violence.” This is not a new idea. In fact, state legislatures have rejected almost two dozen similar proposals across the country in prior years, and for good reasons.<sup>i</sup> Gun control proponents see the concept as an end run around legislatures to further restrict the Second Amendment.

The insurance industry isn’t exactly greeting the idea with open arms. The American Insurance Association (AIA) said in a statement that “property and casualty insurance does not and cannot cover gun crimes...insurers will not insure illegal acts.” That means an insurance mandate would be a gun ban. And that is just what the gun-control proponents want to see.

Of course, accidents are already covered under homeowners’ insurance policies. The insurance companies do not cover illegal misuse of firearms, and they aren’t likely to start offering such coverage now even if states mandated that all firearms owners had to purchase such a policy. Criminals wouldn’t go out and buy such a policy even if it existed.

Furthermore, such proposals pose significant dangers to citizens’ Second Amendment rights and to historical gains in safety practices, while paving the way to onerous new burdens on law-abiding firearms owners and the industry.

## CONSTITUTIONAL RIGHTS VS. PRIVILEGES

Even if the insurance industry was willing to write a policy covering criminal misuse of firearms, the comparison between cars and guns is without merit. Owning a firearm is a constitutional right. Driving on public roads is a privilege. Further, car owners do not generally need a license or registration just to purchase a car, or to keep one for use on the owner’s property.

A more apt comparison to requiring gun owners to carry extra insurance is a poll tax. Both would force law-abiding citizens to pay for exercising a constitutional right. Current law already imposes restrictions on gun ownership, like banning ownership by felons or the

mentally ill. But these restrictions are not based on socioeconomic status, neighborhood location, age or other factors an insurance company interested in staying in business would use to determine whether to cover an individual or how much premium to charge.

Using insurance premiums to inhibit the exercise of the Second Amendment is actually cited as a “benefit” in a 1987 law review article that proposed requiring gun owners to carry insurance. According to the author, “just as young males and persons who live in neighborhoods with high accident rates have traditionally paid higher automobile insurance premiums, one would expect similar classes of persons who represent higher risks to pay more for firearms liability insurance and thus have a more difficult time obtaining it.” He continued, “An added benefit of the insurance requirement is that it would help curb the tendency of some people to obtain arms for insubstantial reasons.”<sup>ii</sup> You don’t need a “substantial reason” to exercise a fundamental constitutional right.

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## BROADER IMPLICATIONS

Enacting an insurance mandate may have unintended consequences for firearms owners and the industry. Returning to the car analogy, the insurance industry could impose all manner of terms and conditions in the policy dictating for example how the firearm must be stored or even which firearms will and will not be covered under the policy. Imagine a policy that excludes coverage for your modern sporting rifle or a semi-automatic handgun.

Moreover, merely labeling a new anti-gun mandate as “market-based risk pricing,” as does John Wasik, a contributing columnist for Forbes<sup>iii</sup>, is deliberately misleading rhetoric and does not make the policy effective. Government reforms that eliminate or limit the government’s role in certain existing markets may fit this description – but not new government mandates that seek to restrict lawful activities. Markets imply voluntary exchange, not mandatory actions.

## CONCLUSION

Imposing a liability insurance requirement on firearms owners would infringe upon the Second Amendment the same way a poll tax impinges upon the First Amendment right to vote. It is a thinly disguised effort to ban firearms or erect yet another barrier to the exercise of the fundamental individual right. In addition to the serious constitutional issues, such a mandate would amount to an end run around the legislature and the democratic process, allowing insurance companies to establish restrictions on the owners and producers of firearms and limit their Second Amendment rights. It would be yet another law criminals will ignore.



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<sup>i</sup> Ian Simpson, “Lawmakers propose liability insurance for U.S. gun owners,” Reuters, Feb. 6, 2013. <http://www.reuters.com/article/2013/02/06/us-usa-guns-insurance-idUSBRE91516920130206> (Last accessed Feb. 25, 2013).

<sup>ii</sup> Nelson Lund, “The Second Amendment, Political Liberty, and the Right to Self-Preservation,” 39 Ala. L. Rev. 103-130, 1987.

<sup>iii</sup> John Wasik, “Newtown’s New Reality: Using Liability Insurance to Reduce Gun Deaths,” Forbes, <http://www.forbes.com/sites/johnwasik/2012/12/17/newtowns-new-reality-using-liability-insurance-to-reduce-gun-deaths/> (Last accessed March 29, 2013).

