

## **Liability Insurance for Gun Owners**

### **A Reasonable Proposal to End Gun Violence in America**

W. A. Barrett, 6/19/2016, [billbarrett04@gmail.com](mailto:billbarrett04@gmail.com)

### **The Proposal**

*Let Congress pass a bill that requires every gun owner to carry a valid liability insurance policy registered to each deadly and operative weapon that he or she owns.*

*The sale or transfer of any weapon from one person to another, such that the recipient has no liability policy attached to the weapon and him/her self not only remains a crime, but any and all liability for use of the weapon remains with the first party.*

*Any gun discovered by law enforcement without an associated valid liability insurance policy shall be impounded and only released to its owner upon proof of purchase of a liability policy.*

*Each such liability policy shall carry a minimum liability dollar level, fixed by law and adjusted annually, which level may depend on the type of weapon and the level of potential damage caused by the weapon.*

*Any insurance company issuing any gun liability insurance may issue an insurance policy for any particular weapon to any particular person, with no fixed limit on the size of the insurance premium.*

*Every insurance company offering gun liability insurance shall belong to and financially support a common insurance pool, said pool to be responsible for the liability of all uninsured weapons.*

*The general terms of membership in an insurance pool and the conditions of liability of the pool shall be set by Congress. Liability levels, premiums, and conditions of weapon ownership shall remain the province of the insurance companies and the insurance pool.*

*Nothing in this law shall abrogate existing gun control laws, whether at the national, state or local level.*

### **Why Liability Insurance Instead of a Simple Banning of Particular Weapons?**

The inability of Congress to control the sale of assault rifles is a national scandal, well documented in the media. The nation has seen three major massacres in the last 12 months, each by a deranged individual. Each has received no action from the Congress.

The honorable congresswoman from New York, Carolyn Maloney, introduced a bill in Congress to impose liability insurance requirements on every weapon, in May 2015. It died, of course, given the strong GOP majority in the House, and their nearly unanimous refusal to accept any limitations on the ownership of weapons by anyone. But - we have this year seen a sit-down strike in Congress (June 2016) by dozens of members, mostly Democrats, protesting the refusal of the speaker of the House to introduce any bill limiting the possession of deadly weapons. That sit-down strike culminated in a shutdown of Congress until later in the summer.

A central problem appears to be that advocates for gun control cannot state a precise set of restrictions on persons and weapons that will somehow result in keeping guns out of the hands of deranged persons. The debate often devolves into detailed and technical arguments over the exact maximum size of a clip for a particular assault rifle. Such arguments over the

minutiae of *military* equipment rarely surface, but for *civilian* ownership of weapons, they proliferate.

The NRA is capable of arousing thousands, if not millions, of gun owners in any congressional district, ready to threaten their representative with a recall petition or negative ads in a future election. This is in spite of numerous polls that show that Democratic voters are more than 80% in favor of gun control, and Republican voters generally more than 60%.

So why are our representatives so reluctant to pass any gun control measures? Well, members of Congress are particularly vulnerable in primaries, where campaign funds are hard to find, there are many divisive issues for voters to consider, and there are many single-issue voters. Representatives also depend on gun owners for campaign funds. Much of that funding - coming directly from an NRA PAC fund - would be instantly cut off should the representative be so foolish to vote for any restrictions on guns.

So what can be done? In this paper, I explore using a free market liability insurance system as a way of dealing with the fractious issues of which guns and which owners, and what they should pay for liability insurance. As I've pointed out, I am not the first to point to liability insurance as a means of combating gun violence. Representative Carolyn Maloney has led the way with her gun liability bill introduced in May 2015.

By shifting most of the details of gun control to the free market system, Congress could then effectively step aside from all the fractious issues of "taking guns away from citizens" or "infringing on the rights of gun owners", "size of ammunition clips", "lethality of a weapon", etc.

Let anyone own any weapon, and as many as they can afford, subject to whatever gun control laws exist. But let there *also* be a national law that requires some level of liability insurance attached to each weapon and its owner. The minimum level of liability to be paid out to any gun victim is already established by prior court decisions, in which a gun victim may sue the culpable party. Thus the issue of setting levels of liability belongs in the judicial branch.

Finally, let the free market determine the premium rates on the insurance.

By shifting responsibility of gun control to the free enterprise profit-seeking insurance companies instead of a politicized Congress, the public should benefit by

- moving what is now a political battleground into the arena of free market competition,
- which ostensibly merely sets monetary insurance rewards to victims of weapon assaults,
- which makes the possession of really dangerous weapons very expensive to their owners, through the premiums charged for the insurance,
- which, over time, should work to keep the most deadly weapons very hard to acquire by fractious or irresponsible individuals,
- and which, in a way that would seem unjust and unconstitutional should the *government* operate in this way, would seem fair and rational when the *free market* operates the same way.

### **Why this Should be Approved by a Conservative Congress**

The simple answer is - *strong lobbying by an insurance industry eager to enter a legal and profitable venture.*

Several major insurance companies, for example, those now issuing auto liability policies, will find this a profitable business, at least in the long run. They will lobby Congress to enable this business, hold down detailed restrictions on ownership, but also make the law enforcement side of gun control seem less restrictive.

There are already several insurance companies offering liability policies to gun owners. The NRA itself offers several levels of protection for gun owners. There is even a special insurance agency that offers protection to concealed weapon carriers.

We should find that an insurance lobby would be an effective counter to the lobbies of the gun manufacturers and dealers. The gun dealers now exert their influence on Congress through the NRA, with only a weak and unorganized opposition from a handful of civic-minded organizations.

The subsequent battle of the two lobbies, several for and one against my proposal, would be amusing to watch. My bet would be on the insurance lobby, for the same reason that they were also very effective against the doctors, nurses, labor unions and citizen groups in defeating single-payer health care insurance.

### **Law Enforcement would Still be Vital**

*Law enforcement must actively check weapon registration numbers against policies.* This can be done in the same way that police now routinely check car license plates and registration stickers. Gun dealers will be required to maintain records - as now - with each weapon sold and attached to an insurance policy. Gun owners may have to submit their weapons to a random inspection process at a shooting range, militia meet, or through a court-ordered inspection warrant. One difference is that gun dealers will also have to be responsible to insurance carriers as well as law enforcement.

Possession of a weapon that is not so insured should carry a fine and/or impoundment of the weapon until suitable insurance is acquired.

### **Impounding a Weapon, not Confiscation**

We suggest law enforcement use *impoundment*, rather than *confiscation* of a weapon, as necessary. Impoundment implies that a weapon is simply stored in a safe location, and is available to be returned to its owner upon acquiring the necessary insurance.

The NRA continually warns their membership about *the government taking one's weapon*. e.g. *confiscation*. Impoundment sidesteps that claim in a way that most citizens, including gun owners, could support. The impoundment itself could also be a free market industry providing storage lockers with a double-key system, in which impounded weapons can only be released upon purchasing or renewing a liability policy.

### **What About Criminal Theft and Use of a Weapon?**

The gun industry claims that further restrictions on guns will do nothing to reduce gun violence. The thief planning a major heist, or the disturbed individual bent on mass murder, are not about to purchase liability insurance policies for their weapons.

- Some killers have purchased their weapons from a gun dealer at a gun show without the required background check. This is a loophole that should be closed.

- Not much can be done about the loner killer full of fantasies against classmates he hates - except to discover - after the fact - that he (usually a guy) has passed background checks, and legally purchased a lot of weapons.
- Most deliberate killers acquire weapons through theft from existing owners, or gun shops.
- Many weapons are stolen from law enforcement officers. A recent Mercury News article listed nearly 1000 weapons stolen from Santa Clara county police and sheriff deputies over the last decade. Many of those were not even reported as stolen.

This is the strongest counter argument offered by the NRA and the gun industry to any proposed legislation to better control gun ownership. But this argument amounts to saying there's a big problem that should be solved, but nothing can be done about it.

Well, what can be done about it is to take action to reduce the number of weapons out there and slowly reduce public anxiety about mass killers. And that should occur through the operation of a free market insurance pool.

### **A Gun Victims Insurance Pool**

What is different in our proposal is the existence of a national *insurance pool* whose sole function is to provide insurance coverage for victims of gun violence arising from an uninsured weapon.

The law establishing such an insurance pool should read something like this:

- Every gun liability insurance provider must be a contributing member of a common insurance pool.
- The insurance pool will be liable for any claim against an unregistered or stolen weapon, regardless of the status of its user.
- The pool may defend itself in a civil court involving a weapon, but only to the extent that an uninsured or stolen weapon is found to be a causative factor of death, injury or damage in the case.
- The insurance pool must be reimbursed for all claims by the members of the pool through some reasonable formula. For example, a pool claim may be partitioned among the pool members in proportion to the liability carried by each of its members.
- Pool administrative policy and expenses, e.g. salaries, hiring and firing, etc. should to be established by similar proportional voting and contribution of its members.
- A pool allocation or loan from federal funds may be necessary to get this system going. A long term goal is to not have to provide any tax payer funds to the pool.

We note that an insurance pool plan is absent from Maloney's bill.

Without a pool, or a valid liability policy, it is next to impossible to find any particular corporation, individual, or dealer liable for any particular damage from gun violence. Every such violence in recent history was in fact perpetrated by someone unable to pay any claims.

Legal action against a gun manufacturer or dealer will generally fail in court, through the reasonable argument that neither of these are directly culpable in the crime. For example, they lack any motivation in perpetrating a particular crime. Selling a weapon to someone who passes a background check under the current law should effectively shield the seller from any

culpability or liability for the crime. For example, no jury would convict a car dealer for selling an automobile to someone secretly intent on using it to run down his spouse.

In fact, most recent mass killers *have* passed a background check, and of course have lacked much of any assets to compensate the victims and families of victims.

### **Long term Gun Control through an Insurance Pool**

But now, consider the long-term consequences of an insurance pool. It does not *itself* issue any liability policies. It instead will be liable for *uninsured* use of any weapon used to injure property or a person. The pool will find itself required to pay out millions of dollars in claims, but with no premium income. Its income must come from the member gun liability insurance companies, and those companies must have the right to set the policy for paying claims and setting premiums on the liability insurance they sell.

Was the victim claimant injured or killed by a weapon under the jurisdiction of this gun control act or not? If so, then any reasonable court claim must be satisfied by the pool. And the pool must be reimbursed from its member gun liability insurers.

Note that none of this should replace existing gun laws. In fact, more gun laws will no doubt pass a more liberal Congress, but they will arise through the political competition of the gun industry desiring *fewer* restraints on gun ownership and this new insurance industry desiring *more* restraints. More restraints means less profit for the gun industry, but fewer gun violence claims, most likely. And the converse.

If I were to bet on the outcome of this lobbying competition, I would bet on the insurance industry. And it will act in a way to better control gun ownership and reduce gun violence, through its influence in the political process, and cooperation with law enforcement.

### **Would This be Constitutional?**

The second amendment to our Constitution has two clauses:

*A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*

The first suggests that firearms are necessary to a state or national militia, which no one would seriously dispute.

The second clause, *the right of the people to keep and bear arms shall not be infringed*, can be interpreted in at least two different ways.

One interpretation is that the government may not pass a law that allows it or its agents to confiscate or impound arms from a citizen, for any reason whatever. But that interpretation is not absolute, as several Supreme Court decisions and various acts of Congress on behalf of gun control have made clear. Congress has required that certain particular lethal arms, e.g. caches of high explosives, military grade weapons, bazookas, nuclear bombs, etc. *can* be confiscated. The political question is at what level does a firearm become a military weapon?

An alternative interpretation is that the Congress may require every gun owner to be a responsible citizen and carry liability insurance for his/her firearm. The working out of that reasonable requirement (should SCOTUS find it constitutional), would then have to require that certain firearms may in fact be taken from the hands of certain individuals, *not through of an explicit act of Congress*, but through enforcement of what amounts to *a failure to acquire liability insurance* for the weapon.

That's a big difference, and a critical one. Much turns on the legal meaning of the word *infringed*, and also just what is meant by *keep and bear*. Does *keep and bear* include an absolute right to discharge the weapon in any manner its owner desires? Or not?

### How this will Help Curb Gun Violence

Should such a law be passed by Congress, and subsequently upheld through constitutionality challenges, I would predict the following would take place:

- Large numbers of current gun owners will be turning in their weapons to law enforcement, rather than pay for insurance and put up with periodic insurance checks by police inspectors. They may also render their weapons useless by some simple modification, like removing the firing pin, to the satisfaction of law enforcement, in the absence of a policy.
- The insurance companies will very likely charge a very high premium for assault rifles and other weapons of mass destructive, or simply refuse to insure them, thereby discouraging their purchase and maintenance. At the same time, small arms or hunting rifles will likely be insured at a much lower cost.
- Given competition among insurance companies for this business, along with their joint eye on the insurance pool for uninsured weapons, the companies have a strong incentive on whether they will qualify a particular weapon and person for insurance, and the rate to charge. A careless or malicious insurance company will find itself saddled with huge liability claims, should it be careless about issuing policies, or issuing policies with small premiums.
- Nothing in this plan forbids Congress from passing laws to restrict possession of certain weapons to certain classes of person outright. But the problem with gun control *now* is that this is the *only* avenue of control for deadly weapons. Also, each such governmental restriction requires political action, and stirs up a hornet's nest of objections from the NRA and politicians fearful of offending NRA members. Most of the opposition to gun control legislation comes from conservative members of Congress, or from conservative members in districts with a lot of gun owners. A blanket law that requires every gun to be insured passes the problem of registration and legal ownership to the free market system. According to George Lakoff and other political scholars, to the conservative mind, the *free market system is essentially sacred and never wrong*. The fact that weapon control would mostly be in the hands of the *free market*, rather than the *government*, should make such a law easier to pass and enforce.
- The pool of insurance companies covering unregistered weapon liability should eventually contain only prudent companies, *i.e.* only those that have balanced their payout levels against premium levels. The payout levels will be determined by successful lawsuits against the pool arising from various incidents. Note that no Congressional, *i.e.* political, payout levels need be assigned. Liability insurance companies have the experience and expertise to work this out with no government legislative or executive branch interference.

## My Answer to Oldermatt's Article

See this article by John Oldermatt, sponsored by the Voices of Liberty, an organization dedicated to right wing causes, including gun rights:

*The Five Problems of Requiring Gun Owners to Buy Liability Insurance*, June 8, 2015, John Oldermatt, <https://voicesofliberty.com/2015/06/08/the-5-problems-of-requiring-gun-owners-to-buy-liability-insurance/>.

Here are the five problems cited in this article, followed by my response to each of them:

1. **The foundation of Maloney's is based upon lies.** *Author says there is no legal requirement to carry auto insurance as Maloney claims. My answer to this particular 'lie' is that it is irrelevant. Maloney merely used it as an example of how Congress might require gun owners to purchase liability insurance. Ultimately, the Supreme Court must rule on this whole law's constitutionality. No one can say how that would turn out, but one can easily make good arguments in favor of this approach.*
2. **It favors the rich and discriminates against the poor.** *Well, shall we pity the poor soul who can't afford to purchase an assault rifle? In fact, that is exactly the point of this sort of law. How many of the mass killers were wealthy? How many really poor folks have enough money to buy a handgun, but not an additional few dollars to purchase a liability insurance policy? Also, if this poor individual cannot pass a background check, he or she should not be carrying a gun. This argument is supposed to motivate liberals to oppose this law. Instead, it disgusts this liberal.*
3. **The legislation equates to a handout for the insurance industry.** *I beg your pardon? The insurance industry is going to have to work for it, and some of the gun insurance companies are going to go bankrupt from not figuring out how to set the premiums high enough. The insurance industry will have to goad law enforcement into keeping firearms away from dangerous persons. And who is providing this handout, anyway? Not the government through taxes - only the gun lovers, and why shouldn't they shoulder the primary burden of the consequences of gun violence?*
4. **Criminals won't buy the insurance anyway.** *I agree with this, which is why an insurance pool is essential. While the pool is ostensibly to provide compensation for the victims of certain gun violent acts, the overall effect will be to pressure the insurance industry to find ways to reduce gun violence, working with Congress and law enforcement to do just that.*
5. **Nearly all criminal actions are excluded from coverage.** *The article claims that 97% of deaths are the result of suicide or homicide. I don't know whether that is true or not, but even suicide has victims, usually family members. And the survivors of a suicide should be entitled to some sort of claim against the gun insurance pool in court. Why was a gun available for someone with suicidal intentions in the first place? Also, a suicide with no injured dependents has no one to claim damages.*

## Summary

A mass murderer using an assault rifle to kill several dozen persons would generate a huge insurance claim against the gun liability insurance pool. Each of the companies in the liability insurance pool would be keenly aware of this risk and demand insurance premiums at a high enough level to support such potential claims.

That, in turn, would cause each company to be careful about just who should be permitted to own such a weapon, how thoroughly its owner should be examined, and how much time is needed to process a new application for insurance.

Great pressure from the pool members would be applied to each insurance pool member to avoid issuing insurance to a potential mass killer.

At the same time, the liability insurance industry will be under competitive pressure to issue policies and keep their premiums low.

And, of course, the separate insurance companies would be interested in issuing policies and collecting premiums.

That technical battle should be carried on within our free market system, and not in the halls of Congress through high-sounding speeches of reform coupled with backroom salutes to the NRA. Nevertheless, the gun liability insurance lobbyists will find it profitable to work with Congress to achieve (for them) high profits, but those high profits will have to come from holding down the claims arising from the common insurance pool. There is therefore a strong incentive by the insurance industry to seek effective gun control and safety legislation, whether or not the NRA approves of any of it.

Our free market system is a marvelous piece of machinery when set loose in some public arena. It's time to exploit its power in support of gun control.

## Bibliography

For more background research of your own, consider running a Google search on *Liability insurance coverage for gun owners*.

There are numerous hits. Many are in response to a bill introduced in Congress by Carolyn Maloney (NY) in May 2015. See this link for a summary of that bill:

<http://thehill.com/regulation/243425-house-bill-would-require-gun-owners-to-carry-insurance>.

*Make gun owners get mandatory insurance*, October 8, 2015, Jeff Yang. CNN Opinion report, <http://www.cnn.com/2015/10/08/opinions/yang-gun-violence/>. This is generally favorable to Maloney's bill. Includes a short summary video.

*The Five Problems of Requiring Gun Owners to Buy Liability Insurance*, June 8, 2015, John Oldermatt, <https://voicesofliberty.com/2015/06/08/the-5-problems-of-requiring-gun-owners-to-buy-liability-insurance/>, unfavorable. Here are the five problems cited in this article:

6. The foundation of Maloney's is based upon lies. *Author says there is no legal requirement to carry auto insurance as Maloney claims.*
7. It favors the rich and discriminates against the poor.
8. The legislation equates to a handout for the insurance industry.
9. Criminals won't buy the insurance anyway.
10. Nearly all criminal actions are excluded from coverage.

My answer to each of these is in the above article. Follow this [link](#), please, if you are reading this in electronic form.

*Firearms personal liability insurance*, from the NRA, <https://mynrainsurance.com/insurance-products/liability-personal-firearms>. The general public may not be aware that the NRA offers

liability insurance for gun owners. The details of their insurance are not listed in these pages - presumably one must purchase a policy to obtain the details. Several other insurance carriers also offer gun liability insurance protection for gun owners and can easily be found with a Google search.

*Insurance for concealed carry owners*, <http://try.usconcealedcarry.net/concealed-carry-insurance-guide-discovery>. Sold by the U.S. Concealed Carry Association. Argues that their insurance can keep the owner out of jail, out of bankruptcy, and "with your family" (whatever that means). Article has several testimonials and claims over 120,000 concealed carry gun owners now have this insurance. Insurance covers legal fees associated with misuse of the weapon. Assures the owner that he or she can carry a loaded gun for self defense without a single worry about an accident and consequent lawsuit.

*Should Gun Owners Have to Buy Liability Insurance?* 1/31/2013, NPR Planet Money, Caitlin Kenney, <http://www.npr.org/sections/money/2013/01/31/170700177/should-gun-owners-have-to-buy-liability-insurance>. Note that this precedes Maloney's bill by almost two years. Perhaps Caitlin inspired representative Maloney into writing a liability bill?

*The Myth of Gun Liability Insurance*, 2/21/2013, John Wasik, Forbes/Personal Finance, <http://www.forbes.com/sites/johnwasik/2013/02/21/the-myth-of-gun-liability-insurance/#151c00e13210>. This article generally favors liability insurance, although it is skeptical that insurance would reduce gun violence. It asks a few questions, which I believe are answered in my essay:

1. Would this prevent anyone from purchasing a gun? *The easy answer is no. In the long term, the insurance industry will be lobbying Congress and working with law enforcement to find more ways to control gun violence. Also, the cost of an insurance policy will vary depending on the potential of a weapon and its owner to generate a costly claim.*
2. Would guns still have to be licensed and background checks performed? *The author answers yes - and of course, I agree with that. The existence of an insurance requirement would not by itself lessen the need for blanket prohibitions, law enforcement and explicit penalties. In the long term, it would change the form of those in a joint effort to reduce gun violence through the profit motive by the liability insurance industry.*
3. What about the second amendment? *See my [essay](#) on this very topic.*
4. Wouldn't this penalize responsible gun owners? *Well, yes, a little. It depends on which guns and which owners. Most gun owners would enjoy very small premiums, not much different than those offered by the current marketplace. This question does bring up the philosophic issue of whether a small inconvenience for the many can be justified by preventing a huge, tragic loss for a few. My concept of a just society is that that is exactly the measure of a just society. We take care of each other in many ways through taxes, donations to charities and volunteer organizations. Why should gun control be any different?*

*Mandatory Gun Insurance - A Practical Plan to make America Safer*, 5/19/2015, Jean Ann Esselink, [http://www.thenewcivilrights\\_movement.com/uncucumbered/mandatory\\_gun\\_insurance\\_a\\_practical\\_plan\\_to\\_make\\_america\\_safer](http://www.thenewcivilrights_movement.com/uncucumbered/mandatory_gun_insurance_a_practical_plan_to_make_america_safer). This author essentially makes the same argument that I've made in my essay, except that Jean Ann does not propose an insurance pool to cover the liability arising from uninsured gun violence. She urges legal *confiscation* of uninsured weapons, which may not withstand scrutiny from SCOTUS under the second amendment.

*House bill to require gun owners to carry liability insurance*, 5/1/2015, Caitlin Bronson, for *Insurance Business America*, <http://www.ibamaq.com/news/house-bill-to-require-gun-owners-to-carry-liability-insurance-22717.aspx>. This author is skeptical that Congress would pass such an act (in fact, that session did not). Author also raises the problem of uninsured weapons owned and used by a terrorist or other criminal - they would of course not want their weapon traceable and would certainly not register it for insurance purposes. It remains an open question whether even a liberal Democratic Congress would pass a liability insurance bill with the scope presented in this essay.

*Mandatory Insurance Looms Over Gun Owners*, 2/16/2016, Marshall Lewin, for *Americas 1st Freedom*, <https://www.americas1stfreedom.org/articles/2016/2/16/mandatory-insurance-looms-over-gun-owners/>. Americas 1st Freedom is essentially an arm of the NRA and is particularly zealous in maintaining all rights of gun owners. The author points out that four major government bodies (New Hampshire, New York, Hawaii and the city of Los Angeles) are working on legislation similar to that proposed in Congress by New York representative Carolyn Maloney. A Vermont bill is contemplated. The article cites an opinion of George Mocsary of Southern Illinois University, who claims such a bill would do nothing to reduce gun violence or compensate victims. The problem, of course, is the uninsured gun user, who cannot be expected to register his or her weapon for insurance purposes. The author does acknowledge that the insurance industry would very much like to see mandatory insurance.

### **The Author**

William Barrett has a PhD degree in physics and mathematics. He has held research positions in several major corporations, and three startups. He has taught electrical and computer engineers in two major universities. He is currently retired, and works with several progressive organizations as a volunteer to promote a more just and equitable society. He resides with his wife and a small cat in San Jose, California.