BURKE, WARREN, MACKAY & SERRITELLA, P.C.

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BWM&S

# ILLINOIS' CONCEALED CARRY ACT

## The Impact On Businesses And Employers

While Illinois' enactment of the Firearm Concealed Carry Act, 430 ILCS §66/1, *et seq.* (the "FCCA" or "Act") has serious implications for business owners, it fails to address whether business owners can prohibit the carrying of firearms in their shops, offices or other workplaces by their employees, customers or visitors. The Act's effect on the rights of business owners and employers has been widely misinterpreted in the news media and by legal commentators who have made incorrect statements asserting "businesses may prohibit firearms."


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# FIRM'S POPE AND COLLADO PRESENT AT NY CONSUMER FINANCE CLASS ACTIONS CONFERENCE

The Firm's LeAnn Pope and Victoria Collado (from left) presented at the 17th Annual National Conference of Consumer Finance Class Actions and Litigation in New York on January 29 and 30.

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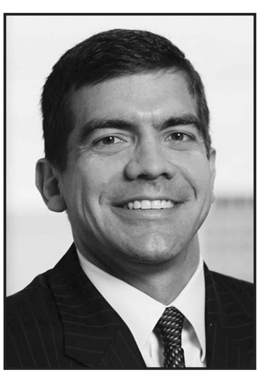
BWM&S

# TELEMARKETING: CALLING CUSTOMERS LEADS TO MULTI-MILLION DOLLAR DAMAGE PAYMENTS

Most of us are familiar with the National Do-Not-Call List and appreciate the resulting decline in the frequency of robo-calls interrupting family dinner. What you may not realize is that the same federal laws that implemented these protections have also formed the basis for multi-million dollar lawsuits against businesses calling their own customers.



*John Darrow*

Since 2012, a dozen companies have agreed to pay in excess of $200,000,000 to settle lawsuits brought under the federal Telephone Consumer Protection Act (TCPA). This includes a $32,000,000 settlement by Bank of America to resolve complaints that calls to cell phones violated the TCPA.

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## BWM&S

# Firm's Overbey and Cox Promoted to Partner

Burke, Warren, MacKay & Serritella recently promoted **Susan Miller Overbey** to partner. She is a member of the Litigation practice as well as the Religious & Not-For-Profit Organizations Practice.

Ms. Overbey has defended banks, mortgage lenders, and related entities in individual and consumer class actions brought in state and federal courts. She also represents religious organizations in litigation pending in state and federal courts, and in alternative dispute resolution settings such as mediation and binding arbitration. Ms. Overbey is licensed to practice in Illinois and the United States District Court for the Northern District of Illinois.

*Susan Overbey*

"I have enjoyed working on litigated matters for both the financial services and religious and not-for-profit groups at the firm. Both groups have a great sense of teamwork with everyone willing to contribute to the job ensuring that it is done to the highest standard for our clients."

Ms. Overbey graduated from the University of Illinois College of Law, *cum laude*, in 2006. She received her B.A., *magna cum laude*, in History with a minor in Politics from Mount Holyoke College in 2003.

While in law school, Ms. Overbey worked as a legal extern for the Honorable Ilana Diamond Rovner of the United States Court of Appeals for the Seventh Circuit. Ms. Overbey was a summer associate with the Firm in 2005. Ms. Overbey can be contacted at 312/840-7051 or soverbey@burkelaw.com.

The Firm recently promoted **Jessica A. Cox** to partner. She serves clients in the Religious & Not-For-Profit Organizations and Litigation Practices.

*Jessica A. Cox*

Ms. Cox focuses her practice on corporate and risk management issues affecting non-profit, religious and social service organizations. Her experience includes representing religious organizations in mediation and other alternative dispute resolution processes as well as assisting clients in conducting internal investigations and developing risk management policies and practices. She has worked with for-profit corporate clients on mergers and acquisitions and prescription benefit management contracting.

"I have tremendous respect for the people I work with, both professionally and personally," says Cox. "That's what makes Burke, Warren such an ideal place to work, the combination of challenging matters and a firm culture that promotes collaboration and allows for a work-life balance."

Ms. Cox received her J.D. from the University of Illinois College of Law in 2006. While in law school, she served as the Associate Editor for the Elder Law Journal. Her note, "Elderly Electors Go Postal: Ensuring Absentee Ballot Integrity for Older Voters," was published in the journal. She received her B.A. with honors in Business Economics, with an emphasis in Accounting, from the University of California, Santa Barbara in 2003. While at Santa Barbara, Ms. Cox was a four year member of the University Honors Program and the NCAA Division I Women's Waterpolo Team. Ms. Cox may be contacted at 312/840-7104 or jcox@burkelaw.com.

## PRO BONO

# Flaherty, Firm Honored by the Chicago Coalition for the Homeless

Nora Flaherty and the Firm were honored by the Law Project of the Chicago Coalition for the Homeless at its annual Justice Circle reception. Ms. Flaherty was lauded for pro bono work, tirelessly advocating for client Niani Scott and her mother Jamilah who faced obstacles to Niani's high school education as a result of their living situation.

The Law Project of the Chicago Coalition for the Homeless is one of the most respected legal aid organizations in Chicago. The Project operates a mobile legal clinic for unaccompanied homeless youth and is known locally, state-wide and nationally for its outstanding work on the educational rights of homeless students. It accepts no government money and thus remains an uncompromised voice in advocating for those without housing.

*Nora Flaherty and clients Niana and Jamilah Scott (left to right).*

REAL ESTATE LAW

# New Wicker Park Development


*Joe von Meier and Dana White are representing LG Construction & Development in their development of a five-story apartment building with first-floor retail near the Division / Ashland / Milwaukee Avenue intersection of Chicago's Wicker Park. The project's concept is in response to the growing demand for car-free urban living and working spaces — a demand recently addressed by the Zoning Board's Transit Oriented Development (TOD) ordinance. The TOD creates opportunities for construction of taller buildings with more units, while requiring fewer parking spaces, to provide incentive for new housing developments near public transit. While creating a fresh living and retail environment that stimulates use of public transit, the design also incorporates the community's request for trees and other landscaping on the podium above the Bank of America branch at 1237 N. Milwaukee.*

## POPE AND COLLADO

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The proliferation of class action litigation against the mortgage banking industry began more than two decades ago, affecting the entire industry, including some of the world's largest financial institutions. The conference was established to help in-house and outside counsel stay current on new class action trends, emerging theories of liability, enforcement actions and regulatory initiatives, and defense and settlement strategies. Attending this conference were federal and state regulators and enforcement officials, senior in-house and outside counsel and federal and state judges.

Pope and Collado were invited to share their insights into managing and responding to new and emerging enforcement actions and regulations, including the Consumer Financial Protection Bureau's new mortgage servicing regulations and new Federal Trade Commission regulations under the Telephone Consumer Protection Act. Pope's presentation also addressed defending against claims and class actions arising from lender-placed insurance and loan modification practices.

"Since 2009, class action litigation has focused on claims arising out of the financial crisis like the MBS litigation, but as these cases are coming to an end, plaintiffs' counsel will shift focus to new and emerging claims against the industry," says Pope. "With the CFPB's new mortgage servicing and origination rules, we will see an increased focus on claims arising out of those new rules."

The Firm's Consumer Financial Services Class Action Defense group has successfully defended several major banks and mortgage banking companies in over 200 nationwide class action cases filed in federal and state courts.

LeAnn Pope, chair and founder of the Firm's Consumer Financial Services Class Action Defense group, can be reached at 312/840-7013 or lpope@burkelaw.com.

Victoria Collado is a partner in the Firm's Consumer Financial Services Class Action Defense group and can be reached at 312/840-7048 or vcollado@burkelaw.com.

# Understanding Indemnification

## An Explanation of Indemnity & Techniques for Managing Your Potential Exposure

Indemnification provisions are common in a variety of contracts, but often their full impact may not be understood. Knowing how indemnification works and becoming familiar with techniques for negotiating indemnification provisions are vital to any business.

**The Purpose of Indemnification.** All indemnification provisions seek to address two distinct purposes: (1) to modify the standard or default contractual remedies available to the parties under statute or common law and (2) to allocate risk between the parties as to specific issues of concern.

*Adam Jung*

With regard to the first purpose, if the parties agree that the standard contractual remedies available to them are inadequate, they can negotiate an indemnification provision that provides for a party to seek certain additional damages, including costs and expenses.

When parties desire to allocate certain risks — essentially providing a kind of insurance — an indemnification provision can be a method for assigning risk among the parties *vis a vis* certain "big ticket items" such as claims for infringement, breach of confidentiality, death or personal injury, property damage, etc. With a well-crafted indemnification provision, the indemnifying party says to the indemnified party: "I will be on the hook and will pick up the tab for any losses or damages that you may incur in connection with these certain big ticket items."

**5 Key Elements of Indemnification.** Indemnification provisions can range from a single sentence to several pages of carefully worded legalese, but all indemnification provisions contain five key elements:

- Who are the indemnifying party(ies)? e.*g., the contracting party, a parent company, a subsidiary, or a guarantor.*
- Who are the indemnified party(ies)? e.*g., the contracting party, affiliates, customers, or end users.*
- What is the obligation? *e.g., indemnify, defend, or hold harmless.*
- What types of claims are covered? *e.g., damages, liabilities, losses, lost profits, judgments, settlements, taxes, fines, attorneys' fees, costs, or expenses.*
- What events are covered? *e.g., breach of a representation or warranty, infringement claims, or environmental claims.*

**Limiting Indemnification Obligations – Techniques.** Every indemnifying party would prefer to eliminate the entire indemnification provision, but that often is not practical. The type of transaction, the relative negotiating power of the parties, or a variety of other circumstances may make the inclusion of indemnification a requirement of the deal. While many clients initially take the position that any indemnification obligation is a deal breaker, there are a number of ways to limit indemnification obligations and to manage the potential exposure of the indemnifying party.

Clearly addressing the five key elements above is the fundamental approach. Precise wording will restrict who is obligated, what the obligation is, to whom the obligation is owed and the conditions of the obligation.

Beyond the five key elements, another simple technique for reducing liability can be to request mutual or reciprocal indemnification when one-way indemnification is initially suggested. By requesting that each party indemnify the other on the same terms or substantially similar terms, each party is more likely to suggest fairer terms and conditions.

Additional language can be added to restrict the claims that can be made under the indemnification provision. Adding a cap is a popular technique, setting the maximum liability of the indemnifying party. Caps are sometimes accompanied by what are known as hurdles, baskets or deductibles, which are variations of a requirement that the indemnified party first reach a specified threshold of damages before seeking indemnification. Claims may also be restricted by limiting the scope of damages, imposing reasonableness or other standards, or by allowing for set-off(s) from amounts owed to the indemnifying party.

Certain procedural limitations may also be helpful. It is not uncommon for a contract to require that the indemnified party notify the indemnifying party in a timely fashion. In some instances, the indemnification obligation may have a survival period or an expiration date. Any procedural limitation benefits the indemnifying party by (i) helping put the indemnifying party in the best possible position to address the claim and mitigate the damages, and (ii) making it more difficult for the

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## TELEMARKETING

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The number of telemarketing related cases has increased by nearly 70% in the past year, with many of these cases brought as class actions.

The TCPA and the federal Telemarketing and Consumer Fraud and Abuse Prevention Act (TCFAP) impose significant restrictions and requirements on telephone calls made to consumers, with heightened standards for calls to cell phones. Every call, text or fax that violates the TCPA can result in damages of $500 to $1,500, and there is no limit to the number of violations that can be included in an individual suit. Violations of the TCFAP may result in fines of up to $16,000 per violation.

While these laws have been on the books for decades, the litigation floodgates opened in 2012 when the U.S. Supreme Court ruled that lawsuits under the TCPA could be brought in federal court. Exposure also exists from regulatory action, as the FCC, the FTC and state attorneys general may enforce telemarketing laws and regulations.

Much of the litigation has arisen from the failure to obtain the consumer's consent to place auto-dialed and prerecorded calls that promote the purchase of goods or services. Simply providing a phone number as a means of contact typically would not be sufficient to qualify as consent. In fact, with the exception of healthcare calls that are subject to HIPAA, the specific, detailed written consent of the consumer is required in order to place such calls.

Beyond consent requirements, legal liability for violating the telemarketing laws may arise from failure to comply with a myriad of other requirement and restrictions. Note that these do not apply solely to prerecorded and autodialed calls, but also apply to live and manually dialed "telemarketing calls." Telemarketing calls generally include any call made to promote the purchase of goods or services. Examples of these requirements include the following:

- Unless an established business relationship exists, telemarketing calls may not be made to any number listed on the National Do-Not-Call List.
- Even if an established business relationship exists, you may not contact consumers if they have indicated that they do not wish to receive telemarketing calls.
- Your company must document every request not to receive telemarketing calls, and create your own internal "do-not-call list." No calls may be made for five years to numbers on the internal list and employees must be trained on the operation and implementation of this list. You may also be required to offer an automated mechanism for consumers to be added to your internal do-not-call list.
- Specific disclosures must be made during the course of a telemarketing call. The required disclosures vary based on the nature of the call.
- Additional requirements pertaining to record-keeping, call abandonment, calling time and caller identification apply to telemarketing calls.

Many companies will outsource their calling campaigns to telemarketing companies. However, be careful in evaluating compliance by your telemarketing subcontractor. You are legally liable under the telemarketing laws for their actions.

Finally, incoming calls to your business may also be subject to the telemarketing laws. For example, incoming calls made in response to a prize promotion, or calls made in response to certain letters or e-mails that fail to include required disclosures, may trigger telemarketing compliance obligations.

This article was written by the Firm's John Darrow. Mr. Darrow is a corporate partner with a concentration in Healthcare Law. He can be reached at 312/840-7003 or jdarrow@burkelaw.com.

## INDEMNIFICATION

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indemnified party to make a valid claim.

In addressing possible third-party claims (where a third-party has asserted a claim against the indemnified party, who now seeks defense and/or reimbursement), an indemnifying party should require control of the defense, including the right to make decisions regarding settlement. This will help protect against the possibility of the indemnified party exacerbating the situation — a concern because the indemnified party knows the indemnifying party will be picking up the tab.

A number of other less common, but still very effective, drafting techniques can be applied to reduce the potential exposure of the indemnifying party. Multiple limitations can be employed together to virtually negate an indemnity provision.

### We're Here to Help

Navigating indemnification provisions can be intimidating, as they carry significant potential consequences to any business. Whether you are structuring the purchase or sale of a business, documenting a customer or supplier agreement, negotiating a licensing arrangement, or working on any other transaction, our attorneys are experienced in negotiating indemnification provisions and can help you understand and limit your obligations.

For more information on managing your potential exposure, contact Adam Jung at 312/840-7097 or ajung@burkelaw.com.

# SEC Exempts M&A Brokers from Registration:
## Freedom at Last – Or Just Another Mirage?

The United States Securities and Exchange Commission recently released another in a series of letter rulings liberalizing registration requirements for firms that focus on brokering small and middle-market businesses. The ruling continues a trend by the "top cop" for securities regulation which exempts mergers and acquisitions advisors from the burdens of registering as full-fledged securities brokers. The registration process is usually long and expensive; thereafter, the M&A advisor must endure the burdens of audited financials and annual compliance examinations.

Without this and other rulings, M&A brokers involved in the sale of company equity would require registration. In the past, SEC required this registration for brokering shares in a corporation or units in a limited liability company. Deals that only involved the sale of assets had never been subject to registration requirements.

### The M&A Broker Ruling

The SEC M&A Broker ruling outlines broad exemptions for firms that negotiate the purchase or sale of their client companies. According to the ruling, a firm that is primarily engaged in brokering the "control" of a business need not register. The exemption applies regardless of the size of the deal. The control standard is only 25 percent of the outstanding equity of a company. The sale of ten percent of the equity will satisfy the control standard if the parties can produce sufficient information verifying that such a low percentage provided the holder with company control. The M&A broker may receive any type of compensation and may participate as much or as little in the transaction as desired.

### The Fine Print

Like any government rule, the fine print of the M&A broker ruling does include some limits.

- The M&A broker may not directly provide financing. This caveat effectively excludes in-house finders at private equity and other funds from receiving a bonus based on the size of the transaction.
- The target must be a privately-held company.
- If securities are issued in connection with the transaction, the deal must qualify as a private offering under the rules of the SEC.
- The M&A broker must limit any advertisement to disclosure of a general description of the business, its location, and the price.
- The M&A broker must be engaged primarily as a mergers and acquisitions advisor. Significant other activities, such as valuation, debt brokering, or other non-M&A advisory activities would disqualify the broker from the exemption.
- The broker may not take custody of any funds or securities, and may not contractually bind its client in the deal.

### Building on the Foundation of the CBI Ruling

The most recent M&A broker exemption builds on the foundation of the SEC's ruling in *Country Business, Inc.* **(http://www.sec.gov/divisions/marketreg/mr-noaction/cbi110806.htm)**. This 2006 ruling was the first pronouncement by the SEC since the mid 1980s regarding M&A brokers, and the first that permitted such brokers to substantially engage in M&A advisory activities and receive a commission based on the size of the transaction.

*Craig McCrohon*

Like the recent M&A broker ruling, the *Country Business, Inc.* ruling exempted M&A brokers.

The letter contained restrictions on the qualification for the exemption which overlap with those contained in the most recent ruling.

The CBI letter is less restrictive than the recent M&A broker ruling in the following ways:

- No limits on advertising. The M&A broker under CBI may prepare complete books promoting the sale of a business and is not restricted regarding the scope of advertising.
- No requirement to primarily focus on M&A brokerage activities. Therefore, an M&A broker can engage in valuation, accounting and other activities in addition to brokering M&A deals.

The CBI letter, however, is more restrictive than the recent ruling in the following ways:

- The M&A broker in a securities transaction cannot be the ultimate negotiator. However, the M&A broker can engage in virtually all other

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# Dobrutsky Joins Positive Coaching Alliance Board


*Jay Dobrutsky*

Jay Dobrutsky was pleased when the opportunity recently arose to join the Board of the Chicago Chapter of Positive Coaching Alliance. PCA is a nationwide non-profit organization dedicated to ensuring that youth sports fulfills its potential of developing self-confidence, empathy, resilience, teamwork, and self-discipline in young athletes. In short, PCA's mission is to develop "Better Athletes, Better People." Developed at the Stanford Athletic Department, PCA, through partnerships with youth sports organizations, leagues, schools and cities, conducts training workshops for coaches, parents, organizational leaders and athletes.

Dobrutsky, who practices in the firm's Litigation and Religious/Not-For-Profit practice groups, welcomed the opportunity to assist PCA in fulfilling its mission. Looking back on his own experiences in youth sports, and now watching his son participate in middle school athletics, Dobrutsky believes that "anyone who has ever been involved in youth sports can't help but appreciate the countless ways in which that experience can teach young people how to meet the challenges they will encounter thoughout their lives." Dobrutsky adds, "I believe that most coaches of youth sports want it to be a positive and enriching experience for their athletes, but they do not always possess the research, knowledge and skills to make that happen. PCA provides that critical support."

For more information about Positive Coaching Alliance-Chicago, visit http://chicago.positivecoach.org. Jay Dobrutsky can be contacted at 312/840-7089 or jdobrutsky@burkelaw.com.

## M&A Brokers

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activities, including the valuation of the business and assistance with the transaction, practically speaking, virtually all of the functional activities of an M&A broker.

- The transactions must be limited to the size standards issued by the Small Business Administration. These limits, however, include some significant companies that will not, as a practical matter, limit the ability of many M&A brokers. For example, certain manufacturing and transportation companies may have up to 1,000 employees. In the case of retail firms, the size limits are so broad that many retail firms may have up to 50 or more units before losing the CBI exemption.

Other restrictions in the CBI letter are similar to those in the recent M&A broker ruling.

### What Is an M&A Broker to Do – Practical Implications

Firms that assist companies with acquisitions and sales transactions must address choices about registration and the focus of their business.

- If the firm and its professionals are registered as brokers, should they maintain this expensive and time-consuming registration?
- What are the competitive benefits of registration? Until these rulings, many brokers considered the registration a mark of distinction that set them apart from less sophisticated competitors. However, with these broad exemptions, is such a competitive advantage worth the trouble?
- Which exemption is better — CBI or the M&A broker ruling? Each letter has its pros and cons. Brokers must consider how to conform their businesses and practices to one of the two letters.
- Are there applicable state laws that will require registration? While most states will follow the lead of the SEC, brokers dealing in several states should double-check local registration rules.

### The Bottom Line

All in all, the M&A Broker ruling and the CBI ruling present a compelling argument for the broker of smaller or middle market firms to forego registration. As the risks of non-compliance dwindle, the benefits of no registration are beginning to convincingly outweigh the costs of registration.

Craig McCrohon is a Corporate and Securities partner specializing in stock offerings, venture capital and acquisitions. You may contact him at cmccrohon@burkelaw.com or 312/840-7006.

## WEALTH & SUCCESSION PLANNING

# Firm's Jonathan W. Michael Featured in The John Marshall Law School Magazine

Jonathan W. Michael has been asked to prepare and teach an LLM-level course at John Marshall Law School on Business Succession Planning. For the past 13 years, Jonathan has been developing and teaching master's level courses at the law school, including Basic Estate Planning and Advanced Estate Planning. He is currently developing a new course for Spring, 2015, which will focus on issues facing business owners, their goals and the disposition of their business interests.

The John Marshall Law School interviewed Mr. Michael about his attraction to estate planning, how he became involved with the program, and his advice to current students in the LLM program. "I received my LLM in taxation because I found the subject matter interesting. As I began my practice, many of my clients also needed estate planning assistance. I found the practice area to be very rewarding," Michael said. "Also, with estate planning, I'm able to assist a broad range of clients, from those whose means are limited but have unique legal issues, to those who face significant tax issues."

*Jonathan W. Michael*

Mr. Michael's Business Succession Planning is a natural extension of his practice. The full article can be viewed at www.jmls.edu/taxeb. Jonathan Michael can be reached at 312/840-7049 or jmichael@burkelaw.com.

## CONCEALED CARRY ACT

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BWM&S attorneys were recently featured in the *Chicago Daily Law Bulletin* ("Concealed carry law lacks clarity on liability," February 13, 2014) for highlighting misconceptions about the Act's failure to address basic issues concerning the rights of business and property owners.

*The Act's effect on the rights of business owners and employers has been widely misinterpreted in the news media and by legal commentators who have made incorrect statements such as "businesses may prohibit firearms."*

### Background

In *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), the United States Court of Appeals for the Seventh Circuit ruled that Illinois' ban on the concealed carry of firearms was an unconstitutional restriction on an individual citizen's right to carry firearms "in public" or "outside the home." The Court did not address whether the Second Amendment guarantees an employee's right to carry a weapon to work. Responding to the Court's mandate, on July 9, 2013, the Illinois legislature enacted the FCCA, becoming the last state in the country to permit some form of concealed carry.

In 2014, the Illinois State Police began accepting applications for licenses to carry concealed firearms in public, and permits are being issued.

### Mechanics of the Act

Under Section 10 of the Act, an individual may apply for and obtain a license to carry a loaded, concealed firearm in public, after undergoing 16 hours of firearms training. 430 ILCS §66/10. The Act prohibits the licensee from carrying the firearm into certain "prohibited areas," such as schools, courts, government buildings, hospitals, libraries, airports, and bars at which over 50% of the establishment's gross receipts come from the sale of alcohol or on public transportation. *Id.* at §65(a)(1)-(23).

Signs indicating the prohibition against carrying firearms must be clearly and conspicuously posted (uniform 4x6 inches in size) at the entrance of a building, premises or real property specified as a prohibited area, unless the building or premises is a private residence. *Id.* at §65(d). The Illinois State Police has approved the signage shown on Page 1.

In all other places (i.e., non "prohibited areas"), a licensee can carry a concealed firearm unless the "owner of private real property … under his or her control" prohibits the carrying

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## CONCEALED CARRY ACT

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of concealed firearms on the property by posting the prescribed sign. *Id.* at §65(a-10). Even if a private property owner bans firearms on his premises, a licensee is permitted to store a firearm in a vehicle in the owner's private parking lot if it is concealed in a case within the locked vehicle or if it is in a locked container out of plain view within the vehicle. *Id.* at §65(b).

### Discretion for Businesses and Employers to Post Signage?

Many business owners and employers have incorrectly assumed (or have been incorrectly told) that they have discretion on whether to post and enforce the approved signage prohibiting firearms in their work places. However, the Act limits that decision solely to the "owner of private property … under his or her control." 430 ILCS §66/65(a-10). It does not extend to business owners and employers who lease the spaces they occupy. Business owners and employers who want to ban firearms in their workplaces and are renting their business premises should obtain permission from their landlords to post the signage, and should try to negotiate for that permission in any lease, or any lease renewal, they enter into.

Even the above provision, which seems to give sign-posting power to the property owner, is inartfully drafted and leaves unanswered questions. For example, in a single-tenant storefront, the business renting the space does not "own" the private property and thus cannot post signage, but the owner, by virtue of renting its private property and relinquishing possession subject to the terms of the lease, arguably does not "control" the property (under traditional premises liability analysis) and thus also arguably could not post or approve the prescribed signage. The phrase "under his or her control" will undoubtedly be the subject of future litigation regarding the Act. In the interim, the best course of action for business owners or employers desiring to ban firearms from their leased premises is to combine the posting of the prescribed signage with a written authorization or direction from the owner/landlord to support the posting.

*Jeff Warren*

*Alex Marks*

### Can Employers Prohibit Employees From Carrying Firearms?

Another unanswered question is whether an employer, who does not own the property it occupies, may prohibit its employees as a term of employment from carrying firearms in the workplace. That is, do the terms of the Act trump an employer's common law right to control lawful employee behavior in the workplace? The Act is silent on this point (unlike similar laws in other states) and provides no guidance as to the rights of employers. Proponents of concealed carry will argue that such a decision again rests solely with the "owner of private property." We think it is likely that employers ultimately will prevail in retaining the right to control working conditions and the conduct of their employees in the workplace, but the Act's failure to deal with the issue means it will probably be resolved through litigation between (and at the expense of) private parties. Even if the right of the employer to control its workplace is upheld, the right would not extend to its customers or visitors without owner-approved signage.

### Liability Risks of Allowing Concealed Carry

Unlike states such as Wisconsin, Illinois' passage of the FCCA did not include an immunity provision to protect private property owners (and/or businesses) that allow concealed carry in their premises. Property owners, employers and/or businesses that control the decision to permit concealed carry and allow it face an increased risk of safety concerns and potential liability for, among other things, premises liability and the risk of workplace violence. Therefore, from a strict liability standpoint, prohibiting firearms and enforcing the prohibition is probably the best practice.

### Conclusion

The ambiguities surrounding the FCCA, and the restrictions on who is allowed to prevent the carrying of concealed firearms in space they occupy, has left businesses and employers in a difficult situation. Business owners and employers need to understand the Act and decide how to address its implications and effect with regard to customers, visitors, and employees.

The article was prepared by Jeff Warren and Alex Marks. Jeff can be reached at 312/840-7020 / jwarren@burkelaw.com. Alex Marks can be reached at 312/840-7022 / amarks@burkelaw.com.

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## TAX LAW

# IRS Offer in Compromise Acceptance Rate at All-Time High in 2013

*Richard Lieberman*

According to a report from *cleanslatetax*, recently released IRS data shows that the offer in compromise acceptance rate reached 41.8% last year. This represents an 11.70% increase in the acceptance rate from 2012 and a 94.83% increase in the Federal acceptance rate from 2009. Most importantly, an acceptance rate of 41.8% for 2013 represents an ALL TIME HIGH. This may signal a more pragmatic approach by the IRS. To discuss this issue, tax planning in general or the tax aspects of business transactions including mergers, acquisitions, spin-offs, redemptions, distributions, and liquidations, please contact Rich Lieberman at 312/840-7011 or rlieberman@burkelaw.com.