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EXPERT OPINION

# To Serve and Protect ... With AI? Liquor Establishments Consider Options

Understandably, insurance carriers who issue commercial general liability and liquor liability policies include firearms exclusions to limit their exposure. But what should these liquor establishments and related entities do to satisfy their legal duties, protect their patrons, and mitigate their liability exposure? Hire more security? Purchase metal detectors? Install more security cameras? What about artificial intelligence?

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Marijuana

**By Kosta Patsiopoulos**

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Bars, casinos, sports and amusement venues, along with other liquor establishments, understand the risks associated with serving or furnishing alcohol to their patrons. One of the ways these businesses protect against these risks is through liquor liability insurance, which aims to guard against claims for injuries to their patrons and other third parties. Unfortunately, these businesses (and their insurers) have also become all too familiar with claims associated with the service of alcohol and subsequent shootings either on their premises or adjacent to their property. Understandably, insurance carriers who issue commercial general liability and liquor liability policies include firearms exclusions to limit their exposure. But what should these liquor establishments and related entities do to satisfy their legal duties, protect their patrons, and mitigate their liability exposure? Hire more security? Purchase metal detectors? Install more security cameras? What about artificial intelligence?

To date, sports venues, school districts and universities, boardwalks, and casinos have all experimented with AI-based gun detection platforms in their facilities to help protect their patrons and mitigate their liability

exposure. For instance, in 2023, New Jersey's Ocean City School District, along with the city's boardwalk, partnered with ZeroEyes, a veteran-founded company that utilizes AI software-based systems coupled with law enforcement intelligence experts to detect weapons. The Pennsylvania-based company has also partnered with Temple University for added security measures with its AI-based gun detection platform.

In discussions with professionals in the insurance industry, there continues to be a nationwide struggle between liquor establishments and their insurers based on firearms exclusions contained within commercial general liability policies. The plethora of litigation nationwide surrounding these commercial general liability policy exclusions is evident. See *Mount Vernon Fire Insurance v. Fourgents Investment Group* (U.S. District Court, Western District of Washington at Seattle, No. 2:25-cv-00271, 2/11/2025) (where the insurance carrier filed a complaint seeking a declaratory judgment on basis that an incident arising from a shooting incident in a parking lot near the insured's premises is not covered and they have no duty to defend and no duty to indemnify the insured); *Kinsale Insurance v. Choi's Sports Time*, (U.S. District Court, Northern District of Georgia, No. 1:24-mi-99999-una, 11/6/2024) (where the insurance carrier sought a declaratory judgment on basis that the commercial general liability policy did not cover a parking lot shooting incident); *Scottsdale Insurance v. Sound Stage Unlimited*, (U.S. District Court, District of South Carolina, Orangeburg Division, No. 5:24-cv-00740-mgl, 2/13/2024) (where the insurance carrier sought a declaratory judgment on the basis that it had no duty to defend a nightclub operator against a former patron's negligence suit, arguing that an assault and battery exclusion in its liquor liability policy bars coverage for the claimant's shooting-related injuries).

When faced with enforcing these firearms exclusions, Pennsylvania courts have upheld these exclusions, finding that insurance carriers have no duty to defend or indemnify these claims. See *Bogdan v. American*

*Legion Post 153 Home Association*, 257 A.3d 751 (Pa. Super. 2021), the Pennsylvania Superior Court reversed the trial court's denial of the insurer's petition to intervene because it was determined that the insurer was entitled to submit special interrogatories to a jury to distinguish damages recoverable for pre-shooting injuries versus those from the fatal shooting to determine which damages, if any, were excluded by a firearms policy exclusion. On remand, the trial court granted the insurance carrier's motion for summary judgment and held that it did not have a duty to defend or indemnify the liquor establishment. The trial court noted that this was an issue of first impression since, at that time, there had been no reported Pennsylvania state court cases addressing the application of the absolute firearms exclusion. The exclusion barred any claims for any "injury, including defense costs, for any 'claim' or 'suit' arising or resulting from directly or indirectly the use of firearms of any kind." The exclusion applied "irrespective of the theory of liability," including dram shop liability claims. The trial court held that since the exclusion was clear and unambiguous, "no coverage exists for the underlying action since the decedent's estate is bringing an action for the decedent's death, which was caused by the use of a firearm." See *U.S. Underwriters Insurance v. George H. Imhof Post 153 of the American Legion State of Pennsylvania*, 2021 Phila. Ct. Com. Pl. LEXIS 19, \*9 (June 30, 2021).

Given these policy exclusions and favorable rulings for insurance carriers, can AI play a role in protecting liquor establishments against these shooting-related claims? While the more traditional options (security, metal detectors, surveillance) still serve a purpose, AI appears to be a viable (and cost-effective) option to either replace and supplement these risk management and mitigation efforts. Not only has AI been implemented to protect against shooting threats at liquor establishments, but establishments that have utilized AI technology have seen lower insurance rates. According to the director of compliance at River Spirit Casino, the casino's utilization of an AI-based gun detection

platform has “enabled them to mitigate liability and lower their insurance rates.” See [Zeroeyes.com/pricing](https://zeroeyes.com/pricing). Based on ZeroEyes’ calculations, metal detectors cost nearly \$100,000, not including active security staffing. On the other hand, the majority of ZeroEyes’ clients “pay less than \$60 per camera stream each month.”

While AI-based gun detection platforms may be useful for liquor establishments to help protect their patrons, a question arises about the admissibility of the data generated from these AI-based gun detection platforms at trial. “As technology advances, particularly in the field of artificial intelligence, these concerns will continue to arise, and judges and litigators—civil and criminal—will continue to wrestle with them.” See *Commonwealth v. Weeden*, 304 A.3d 333, 364 (Pa. 2023). In other words, even if liquor establishments implement these cost-cutting AI measures, there is no guarantee that Pennsylvania courts will allow a jury to review the data generated by these AI-based gun detection platforms when assessing liability for claims associated with the service of alcohol and subsequent shootings. Thus, while it may be practical for liquor establishments to utilize an AI-based gun detection at their facilities, the data retrieved by or generated from these devices may create an admissibility issue for litigators when defending these establishments. As noted by Justice Kevin Brobson in his concurring opinion in *Weeden*, now may be an opportune time for the court’s Committee on Rules of Evidence to address “the use of ‘computer-generated evidence’ in contrast to computer-stored evidence’ at trial.” See *Weeden*, 304 A.3d at 364.

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By ALM Staff

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