

Risk ADVISOR



Guns and Signs

The 84th session of the Texas Legislature made some significant changes in state law related to open carry of guns and the places open carry is permitted. Portions of the law are already in effect and other provisions go into effect on January 1, 2016. The major changes enacted are contained in HB 910, effective January 1, 2016 and SB 273, effective September 1, 2015. HB 910 includes increasing the rights or persons licensed to openly carry a handgun under Texas law. SB 273 outlaws certain types of signs that are commonly posted prohibiting bringing a handgun into a building or premises. SB 273 also positively prohibits bringing a handgun or other firearm into a governmental location where a meeting is being held that is subject to the Open Meetings Act.

According to Dean Roggia, attorney with Taylor, Olson, Adkins, Sralla, Edam, L.L.P. and presenter at the October 23, 2015 Liability Workshop “Legislative Update and Hot Topics,” the net effect of the two laws is that persons licensed to carry handguns in Texas cannot be prohibited from carrying on the premises of a political subdivision or other premises except under the provisions of Sections 46.03 and 46.035 of the Penal code. Section 46.03 prohibits a person who “intentionally, knowingly or recklessly possesses or goes with a firearm on the premises of any government court or offices utilized by the court.” Section 46.035 extends the prohibition in 46.03 to the “room or rooms where a meeting of a government entity is held and if the meeting is an open meeting subject to Chapter 551, government Code and the entity provided notice as required by that chapter” (Open Meetings Act).

Additional guidance for members will be developed as the laws go into full effect and any court challenges develop. In the meantime centers should give serious consideration to removing any gun signs that have been placed at the entrances to center facilities that do not conform to the new laws. Anyone may report a violating sign to the Attorney General’s office. The report to the AG may be made by “a citizen of this state or a person licensed to carry” a handgun that a “political subdivision is in violation.” The process is:

- ✳ The citizen’s notice of violation must first be sent in writing to the political subdivision “that describes the violation and the specific location of the sign.”
- ✳ The political subdivision then has until “the end of the third business day after the date of receiving the written notice” to remove the sign.
- ✳ If the sign is not removed the citizen may then file the complaint with the Attorney General’s office including “evidence of the violation and a copy of the written notice.”
- ✳ Before bringing suit against the political subdivision the AG “must investigate the complaint to determine if legal action is warranted.”

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Coming Events

The Risk Managers Advisory Committee Presents the 2016 Line-up of Liability Workshops for Community Centers

★ **January 29, 2016: Employment Liability, The San Luis Resort Hotel, Galveston,** An update on recent changes to federal and state law regarding discrimination issues, status of independent contractors and the IRS, update on FMLA, ADA and Workers' Compensation issues, What your Employees need to know about Fraud Investigations, Guns and Signs update after the first six months and other emerging topics and trends. Continuing Education credits will be applied for from professional licensing agencies, HRCI and the State Bar. All star cast includes Bill Helfand, Catherine Greaves, Calvin Capshaw, Dean Roggia, Sebastian Chain and Pam Beach.

★ **April 29, 2016: Purchasing Fundamentals and Risk Management, the Westin Galleria, Houston,** Statutory purchasing and performance contract purchasing requirements will be reviewed. Methods of procurement for real estate, goods and services, ethics and public information act requests arising out of purchasing activities will also be discussed. Cautionary tales and purchasing war stories will be told.

★ **July 08, 2016: Confidentiality Issues, The Westin Domain, Austin,** Confidentiality issues continue to be frequent and troubling issues for community centers. The important aspects of preventing confidentiality problems will be presented.

★ **October 21, 2016, Topic to be determined, The Menger Hotel, San Antonio,** Send us your suggestions. There are plenty of vital emerging issues to consider that have a major impact on risk management at community centers.

All hotels listed above will honor state rates for rooms as long as reservations are made before their deadlines. Specific rates and deadline dates will be provided when the flyers for each workshop are issued. Workshops will begin at 8:00 a.m. and conclude by 3:30 p.m. A continental breakfast and full lunch will be served with snacks in the afternoon.

Continuing Education Credits

The Fund has continuing education sponsor agreements with the Texas State Board of Examiners of Social Workers, the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Examiners of Marriage and Family Therapists and the Texas State Board of Public Accountancy. Continuing Education credits may also be applied for from the State Bar, HRCI and the Texas Department of Insurance for specific workshops.



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Risk Advisor

Volume 27, Number 4

Published quarterly by the Texas Council Risk Management Fund.

Questions, comments, tips, advice, ideas, opinions, criticism, and news are welcomed and encouraged. Every effort has been made to ensure the accuracy of the information published in *Risk Advisor*. Opinions on financial, fiscal, and legal matters are those of the editors and others. Professional counsel should be consulted before taking any action or decision based on this material.

Fund Administrator: York Risk Services Group, Inc.

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Loss Control Briefs

Extension Cord Safety

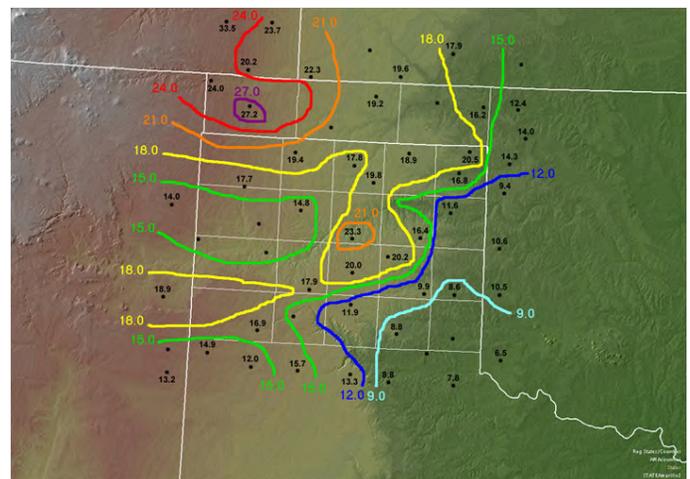
The U.S. Consumer Product Safety Commission estimates that each year about 4,000 injuries associated with extension cords are treated in hospital emergency rooms. About one-half of the injuries involve tripping over cords. The Fund has also paid claims over the years caused by extension cords. The improper use of extension cords is also a common observation of Fund Loss Control Consultants. Following are some tips for safe use of extension cords:

- ★ Use extension cords only when necessary and only on a temporary basis. Permanent wiring should be installed for permanent workstations.
- ★ Inspect cords for physical damage before use.
- ★ Check the wattage rating on the appliance or tool that the extension cord will be used with. Do not use a cord with a lower rating.
- ★ Make sure that all equipment and extension cords bear the mark of an independent testing laboratory such as Underwriters' Laboratories.
- ★ Keep cords off the floor where they might cause a tripping hazard or be rolled over or crushed.
- ★ Keep cords out of water. Unplug and re-route.
- ★ Keep cords away from places they might be caught in moving equipment.
- ★ Keep cords out from under or over doors and away from moving objects that can wear off their insulation.
- ★ Don't run cords through holes in ceilings, walls, or floors.
- ★ Don't run cords under rugs or carpets or in high traffic areas.
- ★ Pull on the plug, not the cord when removing a cord from an outlet.
- ★ Don't move, bend, or modify any of the metal parts of the extension cord plug.

Prepare your Vehicle for Winter

The average January low temperature in Texas ranges from 22 in Hereford in the Panhandle to 52 in Brownsville in the Rio Grande Valley. Every part of Texas can experience below freezing cold and occasional icy weather. These conditions can make driving hazardous even if your vehicle is properly prepared for winter. The Centers for Disease Control and the Fund make the following suggestions for preparing your vehicles for winter driving:

- ★ Check your antifreeze (engine coolant). Add or replace to make sure the freezing point of the fluid is below anticipated low temperatures in areas the vehicle is used.
- ★ Replace windshield washer fluid that might be a mixture of fluid and water. This will prevent the feed line from the reservoir to the windshield from freezing. Carry extra fluid in the vehicle so you can replenish if frequent use during snow or freezing precipitation exhausts the reservoir.
- ★ Make sure tires are properly inflated. Check tire pressures before you start driving. Replace worn tires that don't have enough tread left to provide traction.
- ★ Check your batteries. Cold weather decreases the power available from a battery.
- ★ Watch the weather if threatening winter conditions are imminent. Postpone travel until conditions improve.
- ★ If you transport consumers make sure heaters and defrosters work well and produce sufficient warm air to heat the whole vehicle.
- ★ If the vehicle is equipped with a wheelchair lift clear it of ice and snow before use.
- ★ Keep the gas tank full.
- ★ Make sure vehicles are equipped with an ice scraper
- ★ Apply these recommendations to all vehicles and equipment.



Average Snowfall in Texas, NOAA

Hail Claims

Property related claims paid by the Fund over the last ten years have ranged from a low of \$394,514 to \$8,474,974 paid after Hurricane Ike. Recently, extreme weather over nearly all parts of Texas created a spike in hail claims that hasn't been seen for many years. As of October 30, 2015 the Fund has claims on 61 vehicles totaling \$313,697 and 20 buildings with \$647,253 in damages. These amounts include reserves or "hold back" money that is not paid until repairs have been made. Claims came from Big Spring, Denton, Galveston, Lubbock, Lytle, Plainview and Stephenville in November 2014 and in April and May of 2015. The number of vehicles and buildings involved raise some very important issues for both affected centers and the Fund.

Serious operational issues are posed to a center that has severe hail damage to numerous vehicles and important facilities. Roof leaks can damage office contents including computers and IT system infrastructure. Hail damage to numerous vehicles at one time can make them unusable because of the damage or the time it takes to make repairs. One center had hail damage to 33 vehicles and another had damage to eight of its buildings. Just the number of vehicles damaged can have a significant impact on revenues and clients who are unable to receive services. Case managers who are unable to bill their time because they can't go to their clients could cause a serious loss of income to the center.

The Fund encounters difficulties in administering hail claims when a center is reluctant to take their vehicles out of service to get them repaired. The so called "dentless" repair that is less expensive and just as effective as the traditional body shop approach to repair should be done within three months of the hail damage. If a center waits too long to rotate vehicles through the repair process it can create additional costs to the center in the form of increased experience modifiers based on paid claims affecting contributions.

Another difficulty arises when repairs are delayed or never done to damaged roofs. Often minor hail damage does not cause an immediate leak or other visible damage and a decision is made to take the claim payment but not do the repairs. Subsequent hail damage that is more severe or a roof that eventually starts leaking because of the initial unrepaired hail damage creates an issue when the claim has already been paid. The center wants the damage repaired but the Fund has already paid the claim. What is the right thing to do?

Sincere and honest disagreements sometimes arise over the amount of a claim. Professional engineers specializing in structural damage from hail are sometimes engaged by the Fund to provide expert evaluation of damage. The engineer's findings are sometimes at odds with what the roofing contractor who wants to do the work has told the roof owner. Sometimes a claimant may engage a "public adjuster" to represent the interest of a claimant to the insurer. The public adjuster is usually paid a percentage of the claim settlement so their interest is in increasing the proposed claim payment. A public adjuster might be a good investment when the insurance company is difficult to communicate with or

[see Hail Claims on page 5](#)

Guns and Signs, continued from front cover

- ★ If legal action is warranted the AG "must give the chief administrative officer of the agency or political subdivision" a written notice.
- ★ The written notice must describe the violation and the specific location, state the amount of the proposed penalty and give "the political subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty."

The fines the Attorney General may impose and collect are:

- ★ "not less than \$1,000 and not more than \$1,500 for the first violation, and
- ★ Not less than \$10,000 nor more than \$10,500 for the second or a subsequent violation."
- ★ Each day of a continuing violation constitutes a separate violation.
- ★ The AG may also collect court costs, attorney's fees, investigative costs, witness and deposition fees.

SB 273 took effect on September 1, 2015. By December 1, 2015 a fine for a first violation could be not less than \$91,000 and not more than \$136,500 (considering each day a separate violation). The "civil penalty collected by the Attorney General under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure." The Fund's recommendations at this time are:

- ★ Remove all gun related signs at the entrances to all center facilities
- ★ If you receive a citizen's notice regarding any unlawful sign, remove it immediately.
- ★ If you ignore the citizen and it goes to the Attorney General who issues a notice of violation, remove the offending sign before the 15 day period elapses to avoid the fines.
- ★ Consult legal counsel about the wording of any sign the center proposes that is meant to comply with the new provisions contained in HB 910 and SB 273.
- ★ Although a center may prohibit a person licensed to carry from entering a board room during an open meeting, the language of the sign may apply only to that room and must meet a form specifically stated in the law. Any sign used for this purpose should probably be posted before the meeting on an easel then removed after completion of the meeting. Consult with legal counsel about the proper wording of this type of sign as well.

As additional information is learned, the Fund will provide members with updates on proper signage and other procedures related to the changes in open carry laws in Texas.

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domiciled in another state or country. The Fund is based in Austin and center people who handle claims can reach the Fund adjusters by phone or e-mail. Another avenue of communication is through the center's representative on the Advisory Board. There is also an appeal process that can be used if necessary. All of these avenues are available to settle disputes about coverage or the amount of coverage that are not available with most insurance companies.

Hail damage is usually very easy to spot on a vehicle. There is often a visible dent or other evidence of impact. Windshields and plastic parts may be cracked, pitted or discolored. Even if the metal surface of a car is not dented, the paint may show cracking or damage to the shiny finish. The photographs below contrast minor and heavy damage to center vehicles.



Roof damage may be quite obvious or almost undetectable. Skylights, roof vents, air conditioning equipment and other objects on the roof may also be damaged. The photographs below show some pretty obvious evidence of hail impact.



The next set of photographs shows where a claims adjuster or engineer has marked hail damage that may not be obvious to the naked eye. This is the kind of damage that may encourage some claimants to take the claim check and not have the work done. Years later after wind, heat, cold and ultraviolet light have done their work on the shingles, the roof starts to leak.



The next photographs show hail damage to other parts of a building that should not be overlooked when a hail claim is presented.



All photographs are taken from the claim files of the Fund.

If the center is hit by hail please report it immediately to the Fund. The claims adjusters can get information about where hail has been reported in very specific geographic areas including information about the size and duration of the hail. If you're not sure if your buildings or vehicles have been hit, call anyway and the Fund adjuster can assign an independent adjuster to make an onsite visit to make a determination. Some additional recommendations include:

- ★ If there has been a hail storm in your area, the center may be inundated by contractors and public adjusters wanting to do work for you. Please do not make any commitments to them until the Fund has had a chance to see the damage and make an estimate of the cost to repair it.
- ★ If vehicles are damaged, body shops will be the ones contacting you to give you estimates and promises of rapid repairs. Again, please wait until the Fund has had a chance to see the damage and make an estimate.
- ★ Fund adjusters occasionally make visits to inspect roofs and other hail damage. However, it is far more likely that someone from a reputable and highly experienced independent adjusting company or engineering firm will get up on the roof, view vehicles, take photographs of the damage and submit a report to the Fund about their findings. This will form the basis of the estimate.
- ★ The Fund provides coverage for a center's damaged buildings on a "replacement cost" basis. The final settlement of the claim should be an amount that brings the damaged roof back to its replacement value. The first step is to provide an amount for the work that is based on the depreciated or actual cash value. When the repairs are made a supplemental payment is issued to reach the current replacement value. In all cases, the Fund wants to provide a fair settlement that brings the damaged property back to its original condition. This may mean increasing estimates to recognize damage that was initially not discovered or materials that cost more than originally estimated.

Hail Claims, continued from page 5

- ★ If the center decides to get estimates, request two or three estimates from reputable and locally owned or based roofing contractors. Depending on the size of the hail storm an area may be flooded by contractors from places far from your area looking for work.
- ★ Beware of the promises or statements made by roofing contractors or body shop workers who have a potential conflict of interest when providing you with estimates.
- ★ Fund adjusters know your business and will work as quickly as possible to help you recover from the loss to buildings, vehicles and productivity caused by a hail storm. The Fund has longstanding relationships with the independent adjusters and engineers who visit the center to evaluate the damage. This usually means that they will respond quickly even where damage has occurred to many people over a large area.
- ★ Seemingly minor damage can evolve into future problems. Particularly with roofs and roof structures, get the damage repaired. Severe hail damage to vehicles could “total” the vehicle if it exceeds the current value of the vehicle. Talk to the adjuster about this situation, especially if the center needs the vehicle to maintain services and is not ready to replace it yet.
- ★ Rental reimbursement coverage on Fund Automobile Physical Damage coverage will provide a daily amount for renting a replacement vehicle while a center vehicle is being repaired. No deductible applies to this coverage. Less than half of member centers carry this coverage. Consult with your Customer Service Associate about adding this coverage.
- ★ If there is a seemingly intractable dispute about a hail claim, the center has the option to appeal claims decisions directly to the TCRMF Board of Trustees. This rarely happens, but it is an avenue available to members that no insurance company can offer.

Hail can strike anywhere in Texas and cause huge amounts of damage. Over the years the Fund has paid hundreds of claims for hail damage. The Fund’s goal is to pay your claim fairly and quickly to help the center recover from any interruption to its vital services.