



## Master's Degree in Security

Bellevue University in Nebraska announced the graduation of its first Master's Degree class in Security Management, a program that has experienced high interest from the Security Industry as professionals look to move up within their companies and in the profession as a whole. Bellevue's Master's program will graduate a group of nearly 50 individuals this year. The Master of Science in Security Management Program assists students in developing a leadership style necessary for security management methods and emergency preparedness. Courses are delivered in an online forum that lasts a little more than a year. A Bellevue spokesperson said that, although accreditations offered by organizations such as ASIS international are important at the company level, a foundation of higher education in security management is critical at the national level. ■

## Guard Industry Enjoys More Growth

In all major industries, mergers in 2005 increased over the year 2000 at a record value of \$142 trillion. Facilitating the expansion have been low interest rates and the availability of funds for borrowing. Companies in the guard industry have merged and grown comparable to the overall trend, which in part is due to the emergence of federal security services. *(The Security Letter.)* ■

### Largest Guard Companies

According to Security Letter, the five largest guard companies operating in the United States are:

- Securitas North America, Chicago, IL (Pinkerton, Burns, APS)
- Group 4 Securicor, Palm Beach Garden, FL (Wackenhut)
- AlliedBarton, King of Prussia, PA
- Guardsmark, New York, NY
- U.S. Security Associates, Roswell, GA



Mergers have increased.

Companies have grown at a quick pace.

Contract security services will continue to grow.

## Contract Security Services Predicted to Grow

According to Freedonia Group, the demand for contract security services will continue to grow, although at a slower pace. From 2000 to 2005, annual growth was 6.8%; from 2005 to 2010, growth is projected to be 4.3%. The Freedonia report states: "Despite falling crime rates, many consumers perceive a high risk of crime and harbor a belief that public safety officials are overburdened." Only six companies account for 29% of revenues for the entire market.

They are Securitas, ADT, Group 4 Securicor, Corrections Corporation of America, AlliedBarton and Brinks. *(Security Business, April 3, 2006)* ■

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# Union Continues Aggressive Campaign

The Service Employees International Union (SEIU) continues its aggressive national campaign to unionize already better paid security officers. The campaign is unlike any effort previously undertaken in the industry by a labor union. It's well-financed, creative, and uses political and industrial influences.

SEIU Chief Andy Stern may have learned from the International Longshoremens' Association which has grown in strength by signing master contracts. This makes it difficult for shippers to use nonunion ports. In the disorganized world of security guard services, that option isn't available. Instead, SEIU has concentrated on contract security guard firms with government or high-paying civilian contracts.

Sometimes the campaign centers on the refusal of particular firms to permit union activity. When Wackenhut fell into this category, SEIU produced regular, highly critical and specific criticism of Wackenhut's

practices. Among the accusations: overbilling the Miami-Dade Transit System of \$4.5M per year; overbilling the Departments of Defense and Energy; and, failure to meet other terms of government contracts. SEIU's deleterious information was sent to legislatures, the media, and analysts. The union has organized sit-ins and picketed homes of executives.

In its quest to unionize better paid guards in the Los Angeles area, SEIU drew upon a prominent African-American religious leader and a scholar to provide a civil rights context. Reverend Eric Lee of the Southern Christian Leadership Conference of Greater Los Angeles sees parallels between the civil rights movement and the attempt to obtain better working conditions for security guards, many of whom are minorities. Professor William Julius Wilson of Harvard supports the drive as "very important...for black workers with low to modest levels of education." (*Security Letter, August, 2006*) ■

# Assault in Unguarded Parking Lot

Maria S. parked her car in Kmart's parking lot and saw two men talking loudly. She wanted to report the men to a security guard but did not see one. Maria went back to her car after shopping when the two men pushed her into the car, kidnapped her, and brutally raped her.

Maria sued the store for negligence in failing to patrol the parking lot. Maria argued that if a security guard had been posted in the parking lot, the attack would not have occurred and that the store owed a duty to maintain its premises in a safe condition.

The criminal records for the area showed that no prior sexual assaults or carjackings had occurred in the store parking lot, although numerous thefts and robberies had been committed. The store filed a motion for summary judgment, which the trial court granted on the basis that the sexual assault was not foreseeable and did not give rise to a duty to guard the parking lot.

The court of appeal noted that in order to prevail on her premises liability claim, Maria must show that the store owed her a legal duty and breached that duty, and that the breach caused her injuries. Property owners are required to maintain their property in a reasonably safe condition. This duty includes the duty to take reasonable steps to protect against foreseeable criminal acts of third parties. The provision of a security guard is imposed only upon a showing of heightened foreseeability.

The court ruled the store was not

## Border Security in Texas

Texas Governor Rick Perry is allocating \$5 million to put in a security video surveillance system along the 1,200 miles border separating Texas from Mexico. A major first challenge is detection. A large-scale monitoring operations center or multiple smaller stations (possibly operated by security personnel) will be essential. A network of central stations operating in Irving, Texas (where Brinks and Protection One have stations), could be the model. ■



required to have a security guard present in the parking lot. There was no evidence that similar crimes occurred in the parking lot during the years prior to the attack.

Maria failed to show the high degree of foreseeability necessary to require

the property owner to provide a security guard. The court affirmed the decision of the trial court, granting summary judgment in favor of the store. *Maria S. v. Kmart Corp. No. B177552 (Cal. Ct. App. Jan. 11, 2006). (Premises Liability Report, Feb. 2006)* ■



## Guard Company May be Liable for Shoplifter's Death

**Facts:** Frank Hernandez was a customer at a Safeway store when a security guard, Jose Howard, who was employed by Sonoran Desert Investigations, suspected Hernandez of shoplifting a bottle of moisturizer. Howard confronted Hernandez and restrained him by placing his arm around Hernandez's neck and holding him face down on the floor. Although Hernandez complained that he could not breathe, Howard did not release him.

A security guard may use force when arresting a criminal if it is necessary for self-defense. The force is acceptable if it is reasonable and in response to an imminent threat of fatal bodily harm to the guard.

When two of the business' employees arrived to assist the guard, he handcuffed Hernandez and released him. However, by that time Hernandez had lost consciousness. Hernandez could not be revived and died.

Hernandez's widow sued the security company for wrongful death. The security company moved the court to dismiss the claims, arguing that Hernandez was negligent in committing a crime and assumed the risk of being injured when he decided to shoplift. The trial court ruled in favor of Hernandez, denying the security company motion. The company appealed.

**Decision:** A security guard may (Continued page 4.)

# Guard Misconduct

**Summary:** A U.S. circuit court of appeals reversed and remanded a federal district court's dismissal of a negligent hiring claim against the employer of a security guard who assaulted an individual while off-duty whom he apprehended earlier while he was on-duty.

**Facts:** Lewis Pratt was employed by Patrick & Associates Detective Agency as a security guard for an apartment complex. While Pratt was on duty, he saw Joseph Pressley coming out of an apartment unit with a bag of marijuana. Pratt confronted Pressley, and an altercation ensued. Pressley ran away from Pratt on foot. When Pressley came back for his car, Pratt was still on duty and tried to apprehend Pressley. During a second altercation, Pratt's finger was slammed in Pressley's car door. Pratt reported the incident to the police department. The police subsequently arrested Pressley and brought him to the police department.

Pratt then went to the police department, and with permission from an on-duty police officer, he was allowed to enter Pressley's cell where he assaulted Pressley with a billy club and a can of mace. Prior to beating up Pressley, Pratt mistakenly beat a 14-year-old boy, Zachary Jones, in another holding cell.

Pressley and Jones sued Pratt, Pratt's employer, and the police department. All parties settled except for Pratt's employer. The district court granted summary judgment to the employer, ruling that the employer was not liable for Pratt's conduct because he was acting outside the scope of his

employment at the time he beat Pressley and Jones. The decision was appealed.

**Appeal Decision:** The circuit court stated that an employer of a security guard may be liable for the conduct of its employees where an employee's conduct is the kind he is employed to perform; occurs within an authorized space and limits; is done to serve the employer; and, the conduct is foreseeable. An employer may still be held liable for the guard conduct that occurs off-duty if it is the type of conduct the employee is employed to do and is foreseeable.

The court ruled that the issue of whether Pratt was acting within the scope of his employment was an issue for the jury to decide. The court noted that when Pratt beat Jones and Pressley, Pratt was wearing his guard uniform and reacting to an event that occurred while he was on duty. Such factors weighed in favor of allowing the issue of the employer's liability.

**Implications:** In most circumstances, an employer is not liable for actions of employees done outside the scope of employment. However, if the employee's wrongful conduct is of the same type that he was employed to perform and was foreseeable, an employer may be held responsible under the theory of *respondeat superior*. (*Security Law Newsletter. www.straffordpub.com*) ■

**respondeat superior:** A key doctrine in the law of agency, which provides that a principal (employer) is responsible for the actions of his/her/its agent (employee) in the "course of employment." ([www.law.com](http://www.law.com))

## Shoplifter...Continued

use force when arresting a criminal if it is necessary for self-defense. The force is acceptable if it is reasonable and in response to an imminent threat of fatal bodily harm to the guard. However, the guard may be liable for injuring the criminal during arrest if the guard uses excessive force. The court of appeals ruled that it was unconstitutional to limit Hernandez's widow's recovery because Hernandez committed a crime when the security guard used unreasonable and excessive force. The court of appeals affirmed the trial court's decision in favor of Hernandez's widow.

**Implications:** A security guard is not entitled to use excessive and unreasonable force when arresting criminals, unless the guard has to do so in self-defense. Security companies should be aware of this rule and train their guards to limit the use of excessive force to self-defense situations. (*Security Law Newsletter*, July 2006. *Strafford Publications*) ■

## Counterfeit Fire Sprinklers

Underwriters Laboratories (UL) is notifying consumers, distributors, and property owners of chrome plated automatic fire sprinklers that bear a counterfeit UL mark ("Globe"). The sprinklers are not manufactured by Globe Fire Sprinkler Corporation and have not been evaluated for safety by UL. Legitimate sprinklers manufactured by Globe contain a hex head screw and a Job G5 glass bulb whereas the counterfeit sprinklers are manufactured with a slot head screw and a Job F5 glass bulb. UL recommends that the sprinklers be replaced by qualified service personnel and returned to the place of purchase. ■

# Guards Not Liable for Discrimination

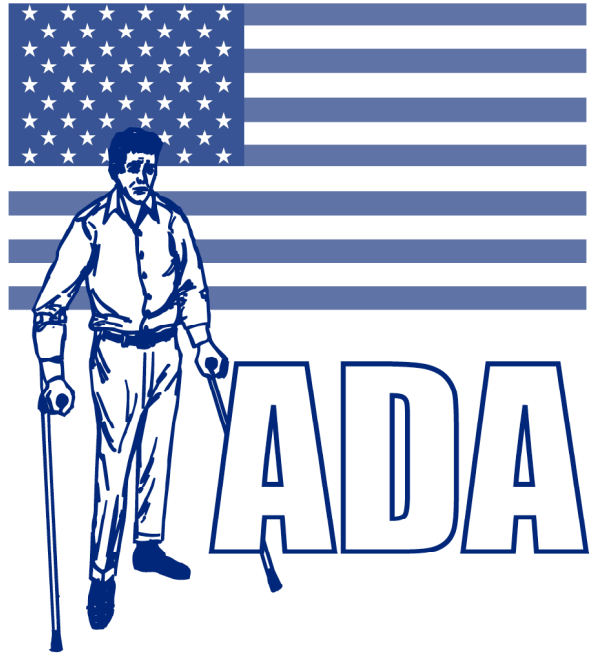
A district court ruled that the Americans with Disabilities Act (ADA) does not apply to individual security guards or a security company that is not in control of the premises it was contracted to provide services to.

Rhonda Abbott, who is hearing-impaired, visited Prints Plus, which is located on property leased from Simon Property Group. The store clerk could not find an item ordered by Abbott, and Abbott asked the clerk if she could have a pen and paper to communicate in writing. The clerk refused and asked Abbott to leave the business.

Abbott did not understand the clerk and did not leave the business. The clerk called for security, which was provided by Control Security Services, a company contracted by Simon. Louis Currier and Jeffrey Ouellette, two security guards employed by the security company, assisted in Abbott's removal from the premises. At the direction of the security company's supervisor, Currier handcuffed Abbott.

Abbott asked Currier and Ouellette for paper and pen to assist her in communicating, but they refused. Kristin Fili, a police officer, drove Abbott to the police station and allegedly taunted Abbott regarding her hearing impairment.

Abbott sued the premises owner, the business, the security company, Currier, Ouellette, Fili, and other individuals for discrimination pursuant to the ADA. Currier, Ouellette, Fili, and the security



company asked the court to dismiss Abbott's claims.

The district court granted Currier, Ouellette and Fili's motions to dismiss Abbott's claims, ruling that the ADA does not apply to individuals. The district court also granted the security company's motion to dismiss, finding that the ADA does not apply to a company that does not lease, own, or control the premises.

The court ruled that, as a contractor that did not own or lease the premises, the security company is not subject to the ADA and cannot be held liable for discrimination.

This case illustrates the general rule that a premises owner is subject to the anti-discrimination laws under the ADA if the owner is in control of the premises. Thus, a security company contracted to provide security services on another's premises is not subject to the ADA discrimination law as to the premise's patrons. *Abbott v. Town of Salem, No. 05-127 (D.N.H. Feb. 2, 2006)*. (*Security Law Newsletter*, with permission of *Strafford Publications*) ■

# Third Party **CRIME**

**Summary:** A court of appeal ruled that a property owner is not liable for the shooting of two patrons by third-party criminals on a sidewalk adjacent to the premises because the shooting was not foreseeable. Further, the court found that the property owner did not assume a general duty to protect the patrons from third-party acts simply by hiring a security guard.

**Facts:** Guillermo Avila and Jeremiah Del Real attended a party at a restaurant owned by Jade Properties Inc. The property owner provided a security guard on the premises. During the party, 20 to 40 people, including Avila, gathered outside of the property on a public sidewalk.

A vehicle driven by members of a gang drove up to the sidewalk and yelled at a group of girls present at the party. A passenger in the vehicle asked Avila where he was from, which Avila recognized was a gang related question. When Avila responded that he was “from nowhere,” the vehicle made a U-turn, and the passengers jumped out of the car. The gang members harassed the partygoers and shot Avila.

When Del Real heard the commotion, he stepped outside and was shot. During the commotion, the property owner’s security guard was on the other side of the property. When someone informed the guard about the fighting, he asked for the assistance of an on-duty sheriff who was inside the property. The guard and sheriff did not call for back-up prior to the shootings and were not able to prevent the shootings.

Avila and Del Real sued the property owner for

negligence and premises liability. The trial court dismissed the case, ruling that the property owner had no duty to protect its patrons from unforeseeable third-party acts that occurred on a public sidewalk.

**Decision:** The court of appeal noted that, in order to show negligence and premises liability, Avila and Del Real were required to show that the property owner owed them a duty and breached the duty, and that the breach caused their injuries. The court noted that a property owner has a duty of ordinary care to protect its patrons from foreseeable dangers. If third party-criminal acts are highly foreseeable, then the property owner has a duty of care to hire security guards.

The court noted that police records did not indicate any past shootings or gang activity on the property, so the property owner had no reason to foresee the shooting. The court ruled that even though the property owner hired a security guard, the property owner did not have a duty to protect Avila and Del Real from unforeseeable third-party criminal acts. The court of appeal affirmed the trial court’s decision in favor of the property owner.

**Implications:** This case illustrates the general rule that a property owner does not have the general duty to hire a security guard or protect its patrons from third-party acts, unless the third-party acts are foreseeable. (*Security Law Newsletter. www.straffordpub.com*) ■

## NBFAA Name to Remain the Same

The members of the National Burglar and Fire Alarm Association (NBFAA) did not reach a two-thirds consensus required to authorize a change to the name of the association. Out of 569 votes, 362 voted to approve a name change while 207 voted against it—13 votes shy of a two-thirds majority. Had members approved the change, the NBFAA would have become the Electronic Life Safety and Systems Association (ELSSA). The proposal to make the name change had been approved by the Board of Directors in a late January strategic summit at the association’s Irving, Texas, headquarters. ■



## Verified Response Study Draws Criticism

After Sonitrol released a verified response white paper to share with police departments, the Security Industry Alarm Coalition, with the support of the NBFAA and others, moved quickly to express concerns. SIAC distributed a statement that said verified response does not reduce crime.

(Source: *Security Systems News*) ■

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# White-Collar Crime

White-collar crime may take the form of consumer fraud, illegal competition, deceptive practices, check and credit card fraud, tax evasion, bankruptcy fraud, bribes, kickbacks, pay-offs, computer-related crime, pilferage, insurance fraud, fencing stolen property, securities fraud, and similar offenses.

The white-collar criminal can be a bank executive who embezzles or a shipping clerk who pilfers. The essential characteristic of white-collar crime, however, has more to do with the nature of the offense rather than the status of the offender. It is non-violent and it involves deceit, corruption, or breach of trust. The offense frequently involves lying, cheating, or stealing through misrepresentation. It can be committed against private individuals, companies, non-profit organizations, and government units.

A problem in addressing white-collar crime is the absence of valid measures for determining if criminal activity is present and to what extent. A difficulty in detecting its presence is the fact that a victim is not aware that he is being victimized, and when discovery is made, it may be too late to take effective action against the offender. In a sense, white-collar crime is an invisible crime.

The invisibility of the crime is complicated by two other factors: an unwillingness of the public to vigorously prosecute white-collar criminals and the failure of investigators to keep pace with increasingly complex schemes. With white-collar crime, the offense is not readily apparent and is usually in progress. The investigator needs to detect the crime and work backwards to identify the principals.



General characteristics of white-collar offenses include:

- Detection is frequently accidental.
- Offenses are frequently reported anonymously.
- There is usually no complainant.
- The scheme has been in existence over a long period of time.
- The crime tends to cover a large geographical area, often spanning several prosecutorial jurisdictions.
- The scheme tends to involve several specific violations of law.
- The principals are usually well-known, respected, intelligent and, in some cases, influential.
- The scheme is sometimes difficult to decipher.
- Evidence tends to get “lost or destroyed” when it is learned that an investigation is in progress. ❏



## Online Training for PIs

Online training for private investigators has two major advantages: low cost and high convenience. The cost is substantially less when tuition, travel, lodging and meal expenses are considered. One doesn't have to take time away from the job or family to do it. And, one can study anywhere, anytime.

Often ignored advantages are quality and consistency. The greatest distinguishing quality is the exclusion of unimportant information. A quality program will present critical or job-essential information only. There are no war stories from the podium or long narratives from a textbook. Quality derives also from up-to-date and thoroughly researched content supplemented with photos, diagrams, charts and progress questions. Progress questions are particularly effective

because they require the student to interact with the program, which adds a dash of competitiveness.

The online approach is consistent because knowledge is presented the same way every time. Not a bit of it is missed when the student gets up from the PC to use the restroom or get a cup of coffee. The student is also able to maneuver anywhere within the program to find a key point.

Online training is used in nearly every teaching and training institution in this country, yet acceptance of it for private investigators is lagging far behind. A major reason is the reluctance of state boards to approve online training courses because there is no measuring stick to determine if a course is good or bad. In other words, there are no standards. A set of standards should address a number of questions: What are the qualifications

of the person(s) who wrote the material? Is the material doctrinally correct and relevant to tasks performed by PIs? Is there a mechanism for providing feedback so that students can assess their progress? Are students able to communicate with the course provider? Is there a final test? Without standards, the state boards are working in the dark.

*Submitted by John “Jack” Fay, owner of The Learning Shop, a provider of online training for private investigators. Mr. Fay is a former U.S. Army CID agent, Director of the National Crime Prevention Institute, corporate security manager for British Petroleum and adjunct professor in criminal justice. He has authored 10 books and teaches part-time at Texas A&M. He can be reached at 404.367.1445 or via e-mail at admin@thelearningshop.com. His website, www.thelearningshop.com, features sample PI courses. ❏*

# Companies Take Big Risk Without Comprehensive Background Checks



A female customer brought her laptop computer to Best Buy for service. She was not informed, and therefore did not know, that Best Buy employees would have access to her personal information including her email address, home address, phone number, and credit card information.

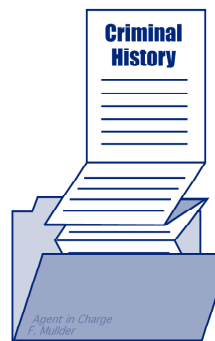
Days after leaving her computer with the store, she began receiving threats over the Internet and by phone, including messages that the caller knew where she lived, where she went to school, what car she drove, and the identities of her friends and family. The messages threatened harm to her and her family.

Investigation revealed that a Best Buy employee obtained sensitive information from the woman's computer. He was charged with cyber-stalking and harassment. He pled guilty and was sentenced to four years in a state prison. The woman filed a lawsuit against Best Buy, accusing the company of failing to conduct a reasonably competent background check, which most likely would have revealed that the employee was a convicted felon at the time he was hired. His extensive criminal record included battery, burglary, theft, criminal damage to property, disorderly conduct, deceptive practice, unlawful use of a credit card and forgery.

**In another case...** Things were much more severe in another case where an attractive college student was escorted by a bouncer from a bar at closing time. The bouncer did not return, and the woman was later found raped and murdered. A DNA test confirmed the suspicion that the bouncer was responsible. It was also determined that the bouncer was not licensed as required by the New York

State Guard Act. If a license had been applied for, the bar owner would have learned of the bouncer's prior criminal convictions.

Incidents such as those described above are far from rare, and the number of companies charged with inadequate security is far from small. Compensatory and punitive damages levied against a company for negligent hiring can be at the million dollar level, an enormous price to pay and which could have been avoided by a \$100 background check.



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Often, the background checks that are conducted are superficial, only verifying an applicant's representations concerning prior employment, education, and required licenses. A comprehensive background check can consist of interviewing persons with knowledge of the applicant, examining civil and criminal records on file at county courthouses, making database searches, conducting drug and alcohol tests, administering pencil-and-paper honesty and integrity tests, evaluating the applicant with the use of a psychological test, and making a life-style inquiry. Generally, applicants for jobs that involve trust are comprehensively screened. Applicants for jobs such as store clerk or bouncer are not typically screened superficially or at all, and herein resides a risk.

Risk, however, is not entirely mitigated at the front door where

hiring decisions are made. An apparently or even "genuinely" safe applicant can go "bad" after being hired. Circumstances outside of the work venue can lead an employee to drug abuse, theft, and physical aggression in the workplace.

What is an employer to do? The answer may be to continue background checking that will alert the employer to post-hire misdemeanors and felonies. In fact, one recent start-up is offering a service. Verified Person, co-founded by former senior executives at Apple Computer and PepsiCo, offers continuous employee screening with automatic updates.

The service is facilitated by digital technology that makes state and local records accessible and improves accuracy and relevance of content. Databases are growing in number, size and sophistication. Verified Person is tapping into the technology and sees its service as a logical and much-needed evolution in background screening. Even at a charge of \$1 or \$2 per month per employee screened, the Verified Person believes it can earn \$10 million per year. The nature of the checking is tailored to the nature of the client's business. For example, a company in the child-care business would be very interested in learning of an employee's recent off-duty behavior that could jeopardize children. The child-care client might not be at all interested in learning of a shoplifting violation.

If Verified Person is correct, background checking is in the early stage of profound change. ■

## ASSOCIATIONS

El Dorado Insurance is actively involved in numerous industry associations throughout the states we serve. While each association is different, you can look to them for continuing education programs and a host of member benefits to help your business. Please visit our website at [www.eldoradoinsurance.com](http://www.eldoradoinsurance.com) for information on how you can reach these valuable industry resources.

## Florida Bill Extends Deadline for Fire Sprinkler Retrofit

A bill recently passed by the Florida Legislature calls for a delay in the retrofit date for high-rise common areas from 2014 to 2025. This is a very controversial provision and is strongly opposed by the fire service industry and the State Fire Marshall's Office. The bill is expected to be passed very soon and sent to Governor Jeb Bush for signing. The American Fire Safety Association (AFSA) is strongly opposed and urging the Governor to veto the bill. The reasons given are:

- Prior to 2004, the required retrofit date was 2012, but after a compromise was reached between condo representatives and the fire service industry, the

date was changed to 2014. Nothing has happened in the meantime to justify extending the retrofit date again, especially for eleven years.

- To extend the required retrofit date again is not only risking possible deaths, injuries, and loss of property in fires in high rise condominiums, but also it is unfair to those condominiums that have already complied with the present 2014 retrofit date.

- As high-rise condos and individual condominium owners become older, the risk of fires and injuries and deaths from fires could increase.

- The State Fire Prevention Code already requires fire sprinklers in new

high-rise individual condos and in common areas. The compromise that was reached only requires the sprinkler retrofit for common areas.

- If an older high-rise condo does not retrofit its common areas soon, it could have a difficult time obtaining fire insurance.

A get-tough ordinance is before the City Council in Rosenberg, Texas. If passed, it would mandate installation of approved automatic fire sprinkler systems in new and existing buildings, and a fine of up to \$2,000 a day for violations. (*American Fire Safety Association, AFSA.* [www.sprinklernet.org](http://www.sprinklernet.org))

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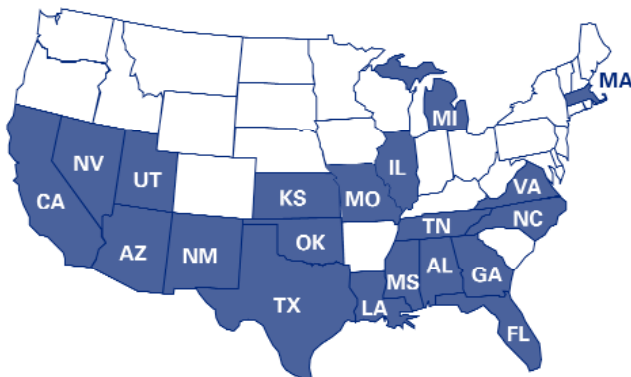
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