

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 10, 2023

1:51 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Löki Tobin

MEMBERS ABSENT

Senator Cathy Giessel

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 61 (STA)

"An Act relating to restrictions on firearms and other weapons."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 61

SHORT TITLE: LIMITATIONS ON FIREARMS RESTRICTIONS

SPONSOR(S): REPRESENTATIVE(S) TILTON

02/06/23	(H)	READ THE FIRST TIME - REFERRALS
02/06/23	(H)	CRA, STA
03/16/23	(H)	CRA AT 8:00 AM BARNES 124
03/16/23	(H)	Heard & Held
03/16/23	(H)	MINUTE(CRA)
03/21/23	(H)	CRA AT 8:00 AM BARNES 124
03/21/23	(H)	Moved HB 61 Out of Committee
03/21/23	(H)	MINUTE(CRA)
03/22/23	(H)	CRA RPT 4DP 1DNP 1AM
03/22/23	(H)	DP: MCKAY, RUFFRIDGE, MCCABE, MCCORMICK
03/22/23	(H)	DNP: MEARS
03/22/23	(H)	AM: HIMSCHOOT
04/11/23	(H)	STA AT 3:00 PM GRUENBERG 120
04/11/23	(H)	Heard & Held
04/11/23	(H)	MINUTE(STA)
04/18/23	(H)	STA AT 3:00 PM GRUENBERG 120
04/18/23	(H)	Moved CSHB 61(STA) Out of Committee

04/18/23 (H) MINUTE (STA)
 04/19/23 (H) STA RPT CS (STA) 5DP 2AM
 04/19/23 (H) DP: C. JOHNSON, CARPENTER, ALLARD,
 WRIGHT, SHAW
 04/19/23 (H) AM: ARMSTRONG, STORY
 05/05/23 (H) TECHNICAL SESSION 5/5 - RECON HELD TO
 5/8
 05/08/23 (H) TRANSMITTED TO (S)
 05/08/23 (H) VERSION: CSHB 61 (STA)
 05/08/23 (S) JUD AT 1:30 PM BUTROVICH 205
 05/08/23 (S) -- MEETING CANCELED --
 05/09/23 (S) READ THE FIRST TIME - REFERRALS
 05/09/23 (S) JUD
 05/10/23 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

STEVE ST. CLAIR, Staff
 Representative Cathy Tilton
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Introduced CSHB 61 (STA) to the committee.

ACTION NARRATIVE

1:51:05 PM

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:51 p.m. Present at the call to order were Senators Kaufman, Tobin, and Chair Claman. Senator Kiehl joined the committee during the course of the meeting.

HB 61-LIMITATIONS ON FIREARMS RESTRICTIONS

[CSHB 61 (STA) was before the committee.]

1:51:46 PM

CHAIR CLAMAN announced the consideration of CS FOR HOUSE BILL NO. 61 (STA) "An Act relating to restrictions on firearms and other weapons."

He noted that this was the first hearing.

1:52:22 PM

STEVE ST. CLAIR, Staff, Representative Cathy Tilton, Alaska State Legislature, Juneau, Alaska introduced HB 61 paraphrasing the sponsor statement.

HB 61 is a response to situations that have occurred throughout the country during the COVID 19 pandemic.

In at least five states including Alaska, and the Municipality of Anchorage, firearms retailers were arbitrarily closed by governors and mayors. When it comes to firearms Alaska is different compared to most other states. Firearm use for protection and subsistence predates Alaska's statehood and the application of the Second Amendment.

HB 61 reaffirms Alaskans' right to survive and protect themselves, along with their rights granted to them through the Second Amendment. HB 61 stipulates that the state, municipalities, and other instrumentalities of the state may not implement new restrictions to access firearms, firearm parts, ammunition, firearms accessories, or shooting ranges resulting from disaster declarations. Furthermore, HB 61 also provides a civil remedy to Alaskans, should any of those entities adopt statutes, ordinances, or policies in violation of the provisions of this bill.

Nothing in HB 61 limits the state, municipalities, and other instrumentalities from regulating firearms or their use within previously established constitutional and statutory boundaries.

[1:53:00 PM](#)

SENATOR KIEHL joined the meeting.

[1:54:09 PM](#)

MR. ST. CLAIR presented the sectional analysis for HB 61.

Section 1 - Prohibits the State, municipalities, and other instrumentalities from restricting the following under a disaster declaration:

1. Possession, use or transfer of a firearm, firearm parts, firearm accessory, or ammunition;
2. Ordering the seizure of the above-referenced items;
3. Limiting the quantity or other restrictions on the sales and services of those items;
4. Closing or limiting the hours of operation for retail establishments that sell and service those

- items unless the closure or limitation applies to all other forms of commerce within the jurisdiction;
5. Closing or limiting the hours of operation for shooting ranges;
 6. Suspending or revoking a concealed carry permit outside of current statutory provisions;
 7. Refusing to accept an application for a concealed carry permit;
 8. Provides for civil action as relief for a violation of the above-referenced prohibitions;
 9. Provides definitions for "firearm", firearm parts, and "firearm accessory";

Section 2 - Repeals a previous definition of "firearm accessory" found under the Alaska Firearms Freedom Act.

[1:56:10 PM](#)

CHAIR CLAMAN asked if he intended to present the PowerPoint.

MR. ST. CLAIR replied that it was up to the committee.

[1:56:35 PM](#)

SENATOR TOBIN highlighted the flags that were flying at half-mast for all of the shooting victims in Texas. She asked how Section 1 would interact with art. X, sec. 1 of the Constitution of the State of Alaska that talks about local government being able to maximize local control. It reads:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

[1:57:26 PM](#)

MR. ST. CLAIR responded that it conflicts with the Second Amendment of the US Constitution, but he didn't have a legal opinion on which would supersede.

CHAIR CLAMAN asked him to proceed.

[1:57:42 PM](#)

MR. ST. CLAIR reviewed the summary of changes from version A to version B of HB 61.

The changes between Version A and B are the insertion of Firearm Parts within the body of the bill and adding the definition of Firearm Parts.

[1:58:17 PM](#)

MR. ST. CLAIR offered the PowerPoint presentation, "HB 61, An Act Relating to the Restriction of Firearms and other Weapons."

Original grammar and punctuation provided.

[1:58:53 PM](#)

MR. ST. CLAIR discussed slide 2, "HB 61 is critical to the Alaskan way of life."

- Subsistence
- Protection
- Constitution

MR. ST. CLAIR moved to slide 2, "Firearm restrictions impact on subsistence."

- Subsistence" is the word used to describe a traditional way of life among many Alaska natives. In the physical sense, it refers to the practice of relying on the surrounding environment as a source of food and materials for daily living.
- 21% of Alaska's population is considered rural.
- Alaska rural residence harvest about 18,000 tons of wild foods per year.
- In rural Alaska 30% of a community provides 70% of the community's food.
- The largest annual per capita harvest of wild food resources comes from rural Arctic communities. In 2017, they harvested roughly 402 pounds per person compared to the average of 15 pounds per person harvested by Anchorage residents.
- Nowhere else in the U.S. is there such a heavy reliance on wild foods.

[2:00:01 PM](#)

CHAIR CLAMAN asked what percentage of Alaskan homes have one or more firearms.

MR. ST. CLAIR said he didn't have that information.

CHAIR CLAMAN asked if he thought it was in the 80 percent and higher range.

[2:00:24 PM](#)

Brief at ease due to technical difficulties.

[2:00:34 PM](#)

MR. ST. CLAIR said he didn't have any data but he assumes that more than 80 percent of Alaskan homes have one or more firearms.

CHAIR CLAMAN shared that when he goes door to door campaigning, he assumes that every house has a gun.

[2:01:00 PM](#)

MR. ST. CLAIR paraphrased slide 4, "Firearm restrictions impact on protection."

- This year a woman and her 1 year old son were mauled to death by polar bear in Wales, the polar bear was killed by a man with a gun, potentially saving lives.
- In 2017, a contract employee for Pogo Mine, was killed by a black bear, while collecting soil samples. The bear was killed by a mine employee with a gun.
- Criminals do not follow laws which make victims more vulnerable.

[2:01:55 PM](#)

MR. ST. CLAIR paraphrased slide 5, "Firearm restrictions and the constitution."

- In January 2022 a federal appeals court ruled that two California counties that shut down gun stores as nonessential businesses in 2020 due to the coronavirus pandemic, violated the Constitution's Second Amendment.
- The Second Amendment to the U.S. Constitution guarantees "the right of the people to keep and bear arms." In 2008, the U.S. Supreme Court ruled in District of Columbia v. Heller that this is an individual right, not requiring participation in a militia.
- In 2010, the high court ruled in McDonald v. Chicago that the right to keep and bear arms is a fundamental right that also applies to the states through the Fourteenth Amendment, which bars any

state from denying liberty to any person without due process of law.

[2:03:01 PM](#)

CHAIR CLAMAN asked if he would agree that the Ninth Circuit Court of Appeals would use the same framework for an analysis in Alaska as it did in the California case he referenced.

MR. ST. CLAIR answered in the affirmative.

[2:03:29 PM](#)

MR. ST. CLAIR continued to slide 6, "Nationwide action on firearm restrictions."

- Four State adopted similar legislation in 2021.
 - South Dakota (SB 129)
 - Georgia (SB 214)
 - West Virginia (SB 458)
 - North Dakota (SB 2344)
- Department of Homeland Security published a memo included Firearm dealers as mission essential.

[2:04:00 PM](#)

MR. ST. CLAIR reviewed slide 7, "Conclusion."

- Firearms, firearm accessories, and ammunition are a part of the Alaskan culture and way of life.
- Firearms facilitate feeding families and food security.
- Firearms allow Alaskan's and visitors to safely explore our beautiful state.
- The Second Amendment grants citizens the right to bear arms.
- Bi Partisan support (SB 136 / HB 179, 2022)

[2:04:39 PM](#)

CHAIR CLAMAN referenced the language in Section 1, paragraph (4) that says a gun shop may be closed only if all shops are closed. He observed that in an extreme emergency, essentials to life such as access to food, water, and medical care could reasonably be treated differently. He asked why the bill assigns access to food on the same level of importance as access to firearms.

MR. ST. CLAIR responded that firearms allow individuals to access food that doesn't come from a store or shelter.

CHAIR CLAMAN posited that Alaskans who are going to access food in an emergency situation most likely already have at least one firearm and ammunition. He said the suggestion that somebody needs access to firearms for subsistence hunting in an emergency places the same priority on guns as a grocery store or a pharmacy.

[2:07:24 PM](#)

MR. ST. CLAIR responded that even if everybody had a gun in an emergency they wouldn't necessarily have a stockpile of ammunition and if the weapon was damaged, it couldn't be replaced.

CHAIR CLAMAN opined that Mr. St. Clair really had not made the case for why firearms have the same standing as a grocery store or pharmacy.

MR. ST. CLAIR responded, "Equity in commerce."

[2:08:17 PM](#)

SENATOR TOBIN followed up on the Chair's questioning. She noted that the Sullivan Arena was designated a gun-free campus when it was being used as an emergency shelter during Covid. She relayed her fear was that if this provision were to pass, a significant increase in the number of guns potentially would flood the Fairview neighborhood. She questioned why the legislature would want to suspend the right for the Municipality of Anchorage to exercise local control considering that the designation was put in place to protect kids and families. She asked why protecting citizens in an urban area shouldn't be part of the dialog.

MR. ST. CLAIR cited 42 U.S. Code Sec. 5207(a)(3).

3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal, State, or local law; or

[2:11:08 PM](#)

SENATOR TOBIN said there is nothing prohibiting somebody from carrying a gun at the Sullivan Arena right now, but it was made a gun-free campus during the pandemic. She asked why the legislature would want to take the right to do that away from the municipality.

MR. ST. CLAIR stated that this legislation does not take away that right; federal law took away that right.

[2:11:43 PM](#)

CHAIR CLAMAN offered his understanding of the legislation. Today, the Anchorage Assembly and the mayor could pass an ordinance prohibiting firearms in the Sullivan Arena based on the fact that it's a shelter that houses people with recognized mental illness. If an emergency were declared a month later, the restriction on firearms prior to the emergency would be legal, but if the assembly and mayor tried to pass such an ordinance after the emergency was declared, HB 61 would prohibit them from doing so. Senator Tobin's question was why the legislature should restrict the municipality in the specific instance of the Sullivan Arena from making it a gun free. He, too, asked why the legislature shouldn't allow the municipality to exercise local control and pass such an ordinance.

[2:13:09 PM](#)

MR. ST. CLAIR responded that it's in federal law.

CHAIR CLAMAN asked what the federal law says.

MR. ST. CLAIR cited 42 U.S. Code Sec. 5207(a)(3) that reads:

3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal, State, or local law; or

[2:14:00 PM](#)

SENATOR TOBIN referenced Centennial Park which currently is open for homeless people to camp. It is not a gun-free campus now but was declared a gun-free campus during the pandemic when it was designated an emergency space for people who were homeless. She requested a legal opinion so the committee could understand how this legislation would affect the municipality's ability to make autonomous decisions to protect its residents.

MR. ST. CLAIR agreed to try to fulfill the request.

[2:14:46 PM](#)

CHAIR CLAMAN referenced the provisions in paragraphs (1) and (2) in subsection (c) on page 2, lines 13-19 which specify who should have standing to bring lawsuits. He said his understanding was that the Alaska Supreme Court has one of the

most liberal standing provisions in existing statutes and common law that allows a range of people to bring lawsuits. He asked why paragraphs (1) and (2) were needed when existing law already allows a range of people to bring a civil action.

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MR. ST. CLAIR responded that the language came from previous legislation on this topic.

CHAIR CLAMAN stated that his question was whether these provisions were needed when the Alaska Supreme Court decisions on standing were already so broad; they were much more liberal than those applied by the US Supreme Court and federal courts.

MR. ST. CLAIR offered to follow up with a response.

[2:16:11 PM](#)

SENATOR TOBIN referred to the provision in subsection (d)(1) on page 2, line 22, that provides punitive damages in the amount of three times the plaintiff's attorney fees. She asked for the derivation of that number.

MR. ST. CLAIR replied that language was lifted from similar legislation; it gives teeth to violating the Second Amendment.

SENATOR TOBIN asked why the legislature would tell the court what to do in terms of setting damages in favor of the plaintiffs.

[2:16:55 PM](#)

MR. ST. CLAIR referred to the legal memo in the bill packets that talks about the use of treble and injunctive damages. The basis is legislation passed in other states. He recalled that treble damages is used 14 times in Alaska Statute.

CHAIR CLAMAN asked if any of the states he referenced allow treble damages against a government entity as opposed to a private entity.

MR. ST. CLAIR surmised that the answer was "No" because the Second Amendment only applies to interference by the government, not a private entity.

CHAIR CLAMAN asked if he was saying that treble damages were only assessed against government entities.

MR. ST. CLAIR responded that he'd need to look at the pieces of legislation to verify his answer. He had looked at North Dakota statutes.

CHAIR CLAMAN said he looked at the North Dakota statutes and he didn't see any treble damage provisions.

[2:19:09 PM](#)

MR. ST. CLAIR offered to get back to the committee.

CHAIR CLAMAN asked him to provide information about whether any of the four states had adopted provisions about treble damages.

CHAIR CLAMAN restated that provisions in Alaska Statute provide treble damages for private entities. If this bill were to pass as currently drafted, it would be the first time the government would be subject to treble damages. He suggested that this would be a bold move and potentially problematic. He also asked whether the sponsor had looked into how the treble damages provision relates to sovereign immunity, and whether the state would be waiving its sovereign immunity by passing this legislation.

MR. ST. CLAIR referred to another legal document in the bill packets that talks about qualified immunity.

CHAIR CLAMAN asked whether mayors could claim qualified immunity if they were sued for treble damages by a gun-rights organization.

MR. ST. CLAIR asked if he was talking about suing the mayor or the city.

CHAIR CLAMAN answered both.

MR. ST. CLAIR responded that the city doesn't have qualified immunity whereas the mayor would have qualified immunity.

CHAIR CLAMAN pointed out that the city was the sovereign so it should be able to assert its sovereign immunity and say it was not subject to damages.

MR. ST. CLAIR said he would have to follow up with a response.

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At ease

[2:32:19 PM](#)

CHAIR CLAMAN reconvened the meeting and noted that he was asking questions about sovereign immunity.

MR. ST. CLAIR referenced point 3 in the legal memo that quotes *Mullenix v. Luna*, 577 U.S. &, 11 (2015). It says:

The doctrine of qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established constitutional rights of which a reasonable person would have known.

CHAIR CLAMAN observed that if this law were to pass and the mayor signs an executive order prohibiting guns in the Sullivan Arena, the mayor would be personally liable for signing an executive order that violates well-known constitutional rights.

MR. ST. CLAIR responded, "Potentially."

CHAIR CLAMAN asked if passing this law would cause the Municipality of Anchorage to waive its sovereign immunity.

MR. ST. CLAIR replied that he would need to get a legal opinion before answering the question.

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MR. ST. CLAIR stated that he previously used the term "treble damages" incorrectly. He referenced item 2 in the legal memo he mentioned previously. It says:

While the punitive damages are in the amount of three times the plaintiff's attorney fees, these damages are not what is typically referred to in statute as "treble damages."

He directed attention to page 2, line 23 and clarified that it's three times the plaintiff's attorney fees, not three times the actual damages.

CHAIR CLAMAN asked if there was any other instance in Alaska statute that had provisions to allow tripling the attorney fees.

MR. ST. CLAIR responded that item 2 of the legal memo states that triple damages are authorized in 14 different Alaska statutes.

CHAIR CLAMAN asked if he was saying that those statutes have specific provisions about tripling the attorney fees as opposed to tripling the other damages the court awards that are unrelated to attorney fees. He cautioned Mr. St. Clair that if he didn't know the answer, he should say so.

MR. ST. CLAIR responded that he didn't know the answer.

CHAIR CLAMAN relayed his understanding that the challenge of attorney fees is whether the plaintiff or the defendant is entitled to actual attorney fees. He added that he was not aware of any instance in Alaska statute where tripling attorney fees is allowed, but there are instances where tripling damages unrelated to attorney fees is allowed. He asked Mr. St. Clair to do some research provide justification for asking the legislature to create an exception that allows damages that treble attorney fees.

MR. ST. CLAIR replied he would follow up with the information. He added that he found that legislation in the state of Georgia lists liquidation damages of three times the plaintiff's attorney fees.

[2:37:18 PM](#)

SENATOR KAUFMAN observed that item 2 of the legal memo says that the damages in 14 different statutes are some combination of attorney fees and other costs.

CHAIR CLAMAN said his question was based on the fact that the calculation of damages generally is a separate analysis than attorney fees.

SENATOR KAUFMAN said he was trying to make sure that the damages weren't being conflated.

CHAIR CLAMAN said he appreciates that Senator Kaufman highlighted that the triple damages under this proposal is only on attorney fees.

[2:39:21 PM](#)

CHAIR CLAMAN held HB 61 in committee.

[2:39:38 PM](#)

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:39 p.m.