

HB

103

A M E N D M E N T #1

OFFERED IN THE HOUSE
TO: CSHB 103(CRA)

BY REPRESENTATIVE DYSON

- 1 Page 1, lines 9 - 10:
- 2 Delete "for negligent design"
- 3 Insert "resulting from a negligent design, a manufacturing defect"

*3/22
adopted*



REPRESENTATIVE FRED DYSON

Alaska State Legislature

1100 North Marine
4th Eagle River Building
Eagle River, Alaska 99577
☎ (907) 594-0000
FAX (907) 594-0015

- Session (Jan-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

MEMORANDUM

March 2, 1999

To: ✓ Representative Andrew Halcro, Co-Chair
Representative John Harris, Co-Chair
Community and Regional Affairs Committee

From: Representative Fred Dyson

Subject: Request to schedule HB 103 

Please schedule a Community and Regional Affairs Committee hearing on HB 103, "An Act relating to civil actions by municipalities and certain public corporations and prohibiting certain civil actions by them against firearms or ammunition manufacturers and dealers." Attached is a Sponsor Statement for your review.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>



REPRESENTATIVE FRED DYSON

Alaska State Legislature

1000 North Steese Blvd.
Juneau, Alaska 99801-1192
☎ 907-465-2199
☎ 907-594-0115

• Session Jan - May •
Alaska State Capitol •
Juneau, Alaska 99801-1192
☎ 907-465-2199
☎ 907-465-4587

Toll free 800-342-2199

HB 103 Sponsor Statement

"An Act relating to civil actions by municipalities and certain public corporations and prohibiting certain civil actions by them against firearms or ammunition manufacturers and dealers."

Around the country municipalities have been suing firearm manufacturers to establish liability for gun violence. The most often stated objective is to pay for costs related to violence in cities. The theory is that firearm manufacturers have conspired to dump excessive guns in friendly markets knowing that the overflow would be illegally filtered into cities with strict gun control laws.

It is the intent of this Act to prohibit political subdivisions in Alaska from seeking reimbursement for the costs of gun-related violence from businesses engaged in the lawful manufacture, sale, design, or marketing of firearms or ammunition. It is not the intent of the legislation to prevent bringing an action for breach of contract or warranty as to firearms or ammunition purchased by a political subdivision or local government authority.

Gun related manufacturing is a legal enterprise producing quality products which are lawfully and safely used by thousands of Alaskans for hunting, sport, recreation and protection. Some municipalities are seeking to create gun control through judicial means rather than through the legislative process, where it belongs.

• E-mail •
Representative_Fred_Dyson
@Legis.state.ak.us

• Internet •
<http://www.akrepublicans.org>

Alaska Outdoor Council Testimony
House Bill 103

"An Act relating to civil actions by municipalities and certain public corporations and prohibiting certain civil actions by them against firearms or ammunition manufacturers and dealers."

Thank you, Mister Chairman, for this opportunity to testify in favor of HB 103 on behalf of the Alaska Outdoor Council, the official state affiliate of the National Rifle Association. At the AOC's annual meeting, delegates voted unanimously to support HB 103.

Obviously, the flurry of lawsuits being filed against this nation's firearms manufacturers by municipalities was spawned by the recently successful lawsuits against the tobacco industry. In the future any industry with deep pockets and considered to be politically incorrect at the moment is at jeopardy.

The AOC considers the current litigation to be a threat to the public's Second Amendment Right to keep and bear arms. If substantial judgments are levied against our firearm manufacturers, they will either put them out of business or elevate the price of firearms beyond the reach of average Americans. Only criminals and the most affluent Americans would be able to obtain guns. If the public cannot obtain firearms, our individual rights to keep and bear arms will have been trampled.

There is yet another major consideration in this debate. The wildlife conservation programs of the State of Alaska and those of all other states will be harmed if America's gun manufacturers are sued successfully for the legal manufacture and sale of firearms. Each year the Alaska Department of Fish and Game receives anywhere from \$7 to 10 million from the arms and ammunition manufacturers through the Federal Aid in Wildlife Restoration Act, more commonly known as Pittman-Robertson Funds. These federal matching dollars have been the backbone of state wildlife conservation programs since 1937. The Alaska Legislature should exercise its power to prevent Alaskans from threatening this all important conservation funding source.

No manufacturer should be held responsible for the irresponsible or illegal use of its products. There is scarcely a product in society that would not be injurious if misused. This is a matter of taking personal responsibility for one's own actions. Litigation against the manufacturers of goods should not be viewed as a shortcut for local governments to swell their coffers and shift blame for social problems.

Used legally in the shooting sports, firearms are among the safest of products. Consider that, statistically, hunting and target shooting are more safe than football, bowling, or even badminton. The firearms manufacturers are no more able to prevent the irresponsible and illegal use of their products than the aerosol can industry can stop teenagers from "huffing" household products to get a dangerous high. What industry will the activist mayors target next?

The AOC urges you to adopt HB 103. Thank you again for this opportunity to testify.



NATIONAL RIFLE ASSOCIATION OF AMERICA
 INSTITUTE FOR LEGISLATIVE ACTION
 555 CAPITOL MALL, SUITE 465
 SACRAMENTO, CA 95814
 (916) 448-2455

March 11, 1999

TO: Alaska State Legislators
 FROM: Brian Judy, NRA-ILA Alaska State Liaison
 RE: Support for Senate Bill 77 and House Bill 103

On behalf of the more than 18,000 NRA members who live in Alaska, I urge strong support for both Senate Bill 77 and House Bill 103. Passage of this legislation is of paramount importance to the National Rifle Association and its members.

These bills would prevent cities and other municipalities in Alaska from filing frivolous liability lawsuits against the firearms industry and would, in effect, assert that the lawful marketing of firearms to the public is not an unreasonably dangerous or socially unacceptable activity.

This legislation is necessary because officials in many cities across the United States are now trying to achieve through the courts what anti-gun activists have been unsuccessful in achieving through the legislative process: firearms prohibition. The basis for these cases has been the suggestion that traditional product liability law can be extended to include the notion that firearms are defective in design because they can *potentially* be misused by criminals or others. These cases have taken the concepts of individual responsibility and personal accountability and turned them on their heads.

If these lawsuits against manufacturers, dealers, and trade associations go forward, they will have a chilling effect on the availability of firearms. At the very least, the cost of firearms to law-abiding individuals will increase dramatically. Thus, the right of law-abiding citizens to keep and bear arms would be infringed. Make no mistake--the point of these lawsuits is to bankrupt the firearms industry and put the manufacturers and dealers of these legal products out of business.

The passage of these bills would put Alaska on record against these frivolous lawsuits and could conceivably encourage the relocation of firearms manufacturers to the state of Alaska, bringing new business to the state and creating jobs.

Please support Senate Bill 77 and House Bill 103.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Targeting Gun Makers With a Cigarette Strategy

'Having tasted victory in the tobacco wars, cities are suing to recover the costs of violent crime'

By Roberto Suro

In a bitter wave of litigation that will include the recent legal assault on the tobacco industry, city governments across the country are preparing to file lawsuits to hold handgun manufacturers responsible for the multibillion-dollar costs of violent crimes.

New Orleans and Chicago led the way with suits filed last fall. Boston, San Francisco, Bridgeport, Conn., and Miami have announced they are putting together legal teams to develop complaints. And Philadelphia Mayor Edward G. Rendell has proposed a simultaneous filing by as many as 100 cities on the same day sometime next year.

"This is just the beginning," Chicago Mayor Richard M. Daley said last month after hosting officials from 15 cities and the U.S. Conference of Mayors to discuss litigation plans.

Inspired by the success of anti-tobacco lawsuits elected officials and gun control advocates see a chance to hit handgun manufacturers with so many suits in so many places that the industry will be forced not only to pay huge dollar settlements but to accept tough new regulations on the sale of their products.

"The tobacco suits prompted some new strategic thinking," says Kristen Rand, director of federal policy at the Violence Policy Center, a Washington, D.C.-based research and advocacy group. "Both tobacco and gun manufacturing have largely escaped regulation in the U.S. and now the justice system has emerged as the best way to ensure that they are held accountable for their products."

Gun manufacturers, like cigarette makers, have successfully defended themselves against numerous lawsuits brought by individuals. But gun control advocates hope to end that streak by bringing the public sector's vast resources to bear on the legal assault.

THAT STRATEGY HAS WORKED AT LEAST to a degree, with tobacco. So far, cigarette manufacturers have agreed to payments of \$246 billion to settle lawsuits brought by state governments and have accepted restrictions on advertising and the sponsorship of sporting events. The settlements are narrower than an unsuccessful deal proposed last year, but gun control advocates and city officials still see great potential in pursuing similar litigation against gun manufacturers. And many believe they have an easier target.

"The gun manufacturers are out nearly as big, as rich, or as unified as the tobacco people, and so they may well buckle when they have to fight lawsuits in every major city in America simultaneously," says a top aide to a big-city mayor who asked not to be named.

Acknowledging their vulnerability to big-time legal warfare fought on many fronts, gun company executives have expressed concern that they might simply be driven out of business by the costs of fighting the suits.

"The survival of a domestic gun manufacturing industry is at stake," says Bob Ricker, director of government affairs at the American Shooting Sports Council, a trade association and lobbying organization for gun manufacturers, which is a defendant in the New Orleans

litigation campaign against the gun industry is still in its opening phase and no central leadership or common strategy has emerged on either side. The National Rifle

In the Line of Fire



Firearm deaths, 1986	
Age	Deaths
0-4	85
5-14	510
15-19	1,950
20-24	4,816
25-29	3,989
30-34	3,414
35-39	3,318
40-44	2,746
45-49	2,289
50-54	1,693
55-59	1,317
60-64	1,077
65-69	1,191
70-74	1,161
75-79	1,027
80-84	785
85+	546
Unknown	28
Total	34,040

SOURCE: National Center for Health Statistics

Association, for example, is not playing as prominent a role as it has on other occasions when the gun industry felt under assault, and the industry itself is fragmented among big international firms such as Beretta and Glock that have large military and law enforcement contracts and a great many downscale manufacturers of semi-automatic pistols.

But cities and state governments are divided over legislation and have not played a dominant role. For example, the Center to Prevent Handgun Violence, an influential Washington, D.C.-based organization, advised New Orleans on developing a complaint that relies on product liability law, while the Violence Policy Center that is recommending the approach behind the Chicago suit has spent a decade fighting lawsuits against gun manufacturers and has developed a theory that seeks to declare gun manufacturers and distributors a public nuisance. In the meantime, attorneys such as Wendell H. Gauthier who were prominent in the tobacco litigation are helping guide some of the gun suits.

For the moment there is no drive to agree on a unified strategy. "Every city is going to have to tailor a legal theory to its local circumstances and its state laws," says Tom Cochran, executive director of the U.S. Conference of Mayors, which has a long record of promoting gun control measures and is acting as a clearinghouse of information for cities that are undertaking lawsuits.

Indeed, some attorneys involved in the lawsuits see an advantage in starting out with a variety of approaches, because if many different assaults are launched, there is a better chance that a few at least will make it through the uncharted legal territory ahead.

Anti-gun advocates also hope to get an unprecedented glimpse into the inner workings of the gun industry by smoking out whistleblowers and forcing them, through litigation, to turn over corporate documents.

"We are going to get into a phase of discovery that will open the gun industry to a kind of scrutiny that has never existed in this country," says David Kairys, a gun control lawyer at Temple University, who helped Chicago file its suit against and is now working with other cities.

The attorneys, for example, hope to find evidence that manufacturers of Saturday night specials exploit the guns' extensive use by criminals or that industry marketing strategies are based on large numbers of illegal or at least questionable sales. Even if only one proceeding generates damaging

Individual gun manufacturers and industry groups insist they should not be made to answer for the acts of criminals.

revelations, the entire effort will benefit the taxpayers, said.

Several different battle plans already are developing. The Chicago lawsuit argues, in effect, that handgun manufacturers have knowingly profited from crime and fear of crime while the New Orleans suit contends more narrowly that the industry has violated state gun safety laws by failing to install devices, such as high-tech gun locks, that would prevent accidental shootings, especially by children.

Regardless of the allegation, the goal is to make handgun manufacturers collectively liable for the municipal costs of handgun violence—expenses that can range from law enforcement salaries to the purchase of emergency medical equipment.

Individual gun manufacturers and industry groups insist they should not be made to answer for the actions of criminals. "The guns in and of themselves are responsible for crime is ridiculous," says Ricker of the shooting sports council.

THE KEY DEVELOPMENT, FIRST IN THE tobacco litigation and now in the gun lawsuits, is a change in the nature of the plaintiff—the party that brings the legal action.

"When one person has sued, whether it's on tobacco or guns, the industries have scored points by attacking that person and claiming the harm was all their fault," says Dennis Henagan, director of the legal action project at the Center to Prevent Handgun Violence.

For example, judges and juries routinely have concluded that smoke is freely chosen to light up and so tobacco companies could not be held liable for the health consequences of that choice. Similarly, gun manufacturers have successfully argued that it was not their fault when someone chose to commit a crime and fired a gun at someone else illegally.

"The states' lawsuits to recover health care costs from tobacco companies showed that a public plaintiff can overcome these obstacles and focus attention on the broad costs to society," Henagan says.

Still, the analogy to tobacco is by no means perfect.

In tobacco cases, plaintiffs could argue that even when cigarettes were used properly, as the manufacturers had intended, a defect—the carcinogenic effect of smoke, for example—inflicted harm on the smoker and the manufacturer should be held liable for it. Moreover, the

fact that a person who uses a gun properly is not liable for the actions of others who use it improperly is a key element in the defense of the gun industry.

"There is no liability for the actions of others," says Ricker. "The industry has a strong ability to defend itself."

"The industry has been in a state of denial for years," says Ricker. "It cannot be held liable for the result from crimes or accidents."

So far, two legal theories have been proposed to try to get around these defenses. Both are under consideration.

THE NEW ORLEANS SUIT ALLEGES that after Louisiana's supposedly strict gun laws, 10,000 guns are transferred annually because manufacturers have failed to design that would prevent the guns from being used for other unauthorized uses. For example, the suit alleges that manufacturers have failed to include adequate warnings of the risks of thefts could gain access to weapons and use them on law to store a gun in a car trunk.

The suit also claims that a number of models have been available for more than 20 years that would prevent an unauthorized person from using the weapons. These include simple combination locks built into the handgun and more technologically complex "personalized" guns that will only fire when the shooter's weapon ring equipped with an encoded code.

"The taxpayers of my city are not bearing the continuing increase in hospital, police costs and ambulance bills associated with this state of violence," says New Orleans Mayor Marc M. Morial.

The New Orleans suit names 15 handgun gun manufacturers, three industry trade associations and several local gun dealers as defendants. Without specifying an amount, the suit seeks to recover the costs of health care, police, ambulance and other services, as well as tax revenues due to defendants' product actions.

In response, the gun manufacturers argue that "the single most important gun safety device is the brain of the owner, and if the owner does not use the gun responsibly, there is no device that can make it safe," Ricker says.

The Chicago lawsuit, by contrast, argues that gun manufacturers have become a "public nuisance" by using marketing and distribution methods designed to circumvent the city's highly restrictive gun laws, which forbid handgun sales (The gun makers "knowingly oversupply" gun shops just outside the city boundaries with the intention that many of those weapons will be sold to city residents according to the suit.)

The suit seeks \$433 million in city costs related to gun violence over the past five years and names 16 gun stores and 22 manufacturers as defendants.

"Handgun manufacturers knowingly participate in an illegal market that supplies criminals, and then they turn around and feed off the fear of crime by convincing people they can protect themselves by buying these products," Kairys says. "They profit from crime and so they should pay the public costs of crime."

Ricker responds: "How can a city claim that guns cause crime when it gives guns out to police officers, in order to stop crime? It is not the guns that are at fault when a criminal commits a crime."

New Orleans claims that the industry has violated state gun safety laws by failing to install high-tech gun locks and other devices that would prevent unauthorized users from firing them.

Chicago is suing the industry for contributing to a "public nuisance" by oversupplying surrounding suburban stores with guns, knowing that the surplus will find its way into the city where laws are tight.

RELATED STORIES:

[N.Y. gun locks at gun makers' at a distance](#)
February 11, 1999

[S. may sue gun suppliers for gun violence](#)
January 28, 1999

[Over 100 S. may sue gun suppliers for gun violence](#)
January 2, 1999

[Gun study suggests handgun purchases to decline with a record](#)
December 31, 1998

[NRA sues to block FBI from keeping lists of gun buyers](#)
December 1, 1998

RELATED SITES:

[U.S. Bureau of Alcohol, Tobacco and Firearms](#)

[National Rifle Association](#)

[U.S. Conference of Mayors](#)

Note: Pages will open in a new browser window

External sites are not endorsed by CNN Interactive

Home
About Us
Contact Us
Privacy Policy
Terms of Service
Site Map

DISCUSSION

Message Board
Chat
Feedback

SITE GUIDES

help
contents
search

FASTER ACCESS

Europe
Japan

WEB SERVICES

UPS Global Business Center



FIND books
barnesandnoble.com

Business	[-]
Tech	[-]
Fiction	[-]

80

Philadelphia Mayor Edward G. Rendell has proposed that as many as 100 suits be filed on the same day to overwhelm the industry. And Chicago Mayor Richard M. Daley warned in December that "this is just the beginning."

The Brooklyn case

The Brooklyn suit was viewed as a test case for anti-gun suits brought by cities. Some predict that the verdict in the case could set off a free-for-all in which the industry might be forced to pay large sums for damages to cities around the country. It could also lead to restrictions on marketing and production as well.

"I thank God, we absolutely won," said lead plaintiff Freddie Hamilton, whose son, Njuzi, was slain in 1993. She predicted the verdict would bring a "new phase" of litigation against the firearms industry.

Families of six homicide victims and the severely wounded man brought the civil lawsuit against 25 gun manufacturers, seeking millions of dollars in compensation. In the one case where the shooting victim survived, the jury assessed the gun manufacturers \$4 million in damages. But the victim, Steven Fox, and his mother will get only a portion of that -- a sum in excess of \$500,000.

No damages were awarded to families of the dead, an issue that one juror said divided the panel in its six days of deliberations.

The February 11 verdict cleared 10 of the 25 manufacturers named in the suit of negligence. "We have seen some things they did that helped take guns off the street ... and stuff like that, that a lot of others didn't do," juror Charles Beatty said.

A lawyer representing six of the companies said all efforts will be made to have the verdict overturned.

The plaintiffs in the Brooklyn case argued handgun makers



BACKGROUND:

- CNN's Allan Dodds Frank examines the municipal movement against guns

Windows Media:
28K 80K

- [Targeting guns at the source](#)

TIMELINE:

- [Guns and the Law](#)

INTERACTIVE MAPS:

- [Cities vs. Guns](#)
- [Gun laws by state](#)

MESSAGE BOARD:

- [Who's responsible for gun violence?](#)

OTHER SITES

POLL:

Should gun manufacturers be held liable for gun violence?

- Yes
 No
 Sometimes

[vote](#) or [View Results](#)

Jumping the Gun?

Attacks on Firearms Echo Earlier Assaults On Tobacco Industry

But Contrasts Are Big, Too;
No Leaked Memos Yet,
Nor Same Sums at Stake

'Cigarettes Can Only Kill You'

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

Tobacco lawsuits indisputably spawned the new wave of suits against the gun industry. In the escalating public debate over mass-injury litigation, the two tend to be equated, as if gun makers will inevitably tread the same path.

Not so fast.

Depicting themselves as children of the tobacco crusade, a determined group of antigun lawyers has mounted a serious threat to the way the gun industry does business that would have been unimaginable only two years ago. But at least some veterans of the tobacco fight aren't yet convinced the analogy holds up. David Kessler, the former chief of the U.S. Food and Drug Administration who played a critical role in pressuring tobacco companies to the bargaining table, says he still doesn't "see the comparison" between cigarette and gun makers.

On the Sidelines

Attorney Richard Scruggs helped lead the courtroom offensive on tobacco. But he has turned down invitations to get involved in the gun suits. Likewise, Prof. Laurence Tribe of Harvard Law School, who helped shape strategy against cigarette makers, rejected feelers made on behalf of gun foes.

The legal theory behind the gun suits—that governments should be reimbursed for public costs related to gun violence—was adapted from the tobacco suits brought by state attorneys general. But, as suggested by the reticence of Messrs. Kessler, Scruggs and Tribe, the legal fight over guns so far lacks elements that were critical to achieving the states' landmark settlement with the tobacco industry.

Guns, while controversial, can be used for self-protection, target shooting and law enforcement, and thus can't be demonized to the degree tobacco was, says Mr. Scruggs, who keeps a handgun at home. "Cigarettes can only kill you," he says.

Revealing corporate deceit badly weakened tobacco defenses, notes Dr. Kessler, now dean of Yale Medical School. They haven't surfaced—at least not yet—in the gun story. Conditioned by real-life headlines and Hollywood legal thrillers, potential jurors, judges and politicians now expect this kind of "smoking gun" evidence before taking mass-injury suits seriously, says Harvard's Prof. Tribe.

But while cigarette makers for decades disputed the fundamental deadliness of smoking, firearm companies don't hide the fact that guns are designed to kill.

In private, some lawyers suing the firearm industry concede that, as one puts it, "Guns are more complicated than cigarettes." The mere names of some of the companies being sued—Colt's Manufacturing Co. and Smith & Wesson Corp., for example—bring to mind for many people images of frontier individualism or honorable law enforcement.

In another important respect, gun suits can't imitate their predecessors: The dollars aren't there. With annual U.S. sales of \$45 billion, cigarette manufacturers had the wherewithal to settle with the states for a total of \$246 billion over 25 years. Annual gun manufacturer sales total \$1.4 billion.

Shallow Pockets

Mr. Scruggs says he isn't convinced "that there's so much money at the end of the day" for a potential settlement. With an estimated 230 million guns already in circulation in the U.S., the Pascagoula, Miss., attorney questions whether lawsuits are the best way to curb violence. And he also acknowledges that unprecedented fees from the cigarette wars have dulled some lawyers' pecuniary appetites. His own small firm stands to take home hundreds of millions for its tobacco work.

Fatigue is another issue for some top tobacco antagonists. "We need to recharge our batteries," Mr. Scruggs says.

But a consortium of plaintiffs' firms that tried unsuccessfully to mount a national class-action suit on behalf of smokers—and therefore might be hungrier than Mr. Scruggs—has turned its attention to guns. Headed by New Orleans attorney Wendell Gauthier, the group has already signed up that city as a client and is negotiating with several other municipalities about representing them.

Mr. Gauthier, who despite missing out on the big tobacco settlements has won many millions for plaintiffs over the years, warns that it is far too early to write off gun lawsuits. The tobacco suits at first were ridiculed as fanciful, he notes. "We're going to see whistleblowers coming out of the woodwork on guns," he predicts. And he sees last month's partial victory in federal court in Brooklyn, N.Y., by a group of individual shooting victims who sued gun companies as a promising sign for the municipal litigation.

Although his group would take 30% of any jury award to New Orleans, or 20% of a settlement, Mr. Gauthier says he isn't in the gun fight primarily for the money. He maintains that if enough municipalities sue the gun industry simultaneously, companies will be forced to agree to long-re-

Please Turn to Page A6, Column 1

Reluctant Witness

The only potential gun-industry turncoat to surface so far hasn't had any discernible impact. Robert Hass, a former senior vice president for marketing at Smith & Wesson, a unit of Britain's Tomkins PLC, said in a deposition in the Brooklyn lawsuit that gun companies could do more to police distribution of their wares. But because of his reluctance to speak publicly, combined with health problems, the Connecticut retiree didn't appear at trial to elaborate. Lawyers familiar with the situation say he isn't eager to do so in other cases.

A defector of a different sort also helped push tobacco interests to seek a truce. Bennett LeBow, a New York financier who controls Liggett Group Inc., the weakest of the industry's five largest players, agreed in 1996 to cut his losses and settle four state suits at a time when other tobacco firms were vowing never to surrender. A year later, he again broke with rivals to declare nicotine addictive and admit that cigarette makers target minors.

More fractious and diverse than the tobacco business, the gun industry could conceivably produce a renegade who would effectively turn state's evidence. But so far, that hasn't happened. The recent ousting of a firearms trade group executive who opened back-channel communication with antigun lawyers has been seen as a sign that industry hard-liners aligned with the National Rifle Association are trying to take control of the litigation.

'Pressure Will Build'

Some veterans of the tobacco wars nevertheless see the same sort of process beginning again with guns. Richard Daynard, a law professor at Northeastern University in Boston who for 15 years has advocated tobacco suits, is leading the first academic conference to foster gun suits, scheduled for May. He has changed the title of his strategic-litigation course to: "Controlling Tobacco, Guns & Other Politically Protected Hazards."

"Political pressure will build for mayors to bring these cases against gun companies, just as it did for the attorneys general with cigarettes," Prof. Daynard says. If the number of cases grows, "the possibility of even a few breaking through" becomes a serious threat. "The connection between cigarettes and guns," he continues, "is that both used political influence to escape safety regulation, and eventually people got tired of that and turned to the courts" to rein them in.

Popular opinion of makers of cigarettes and guns is hard to discern. Hostility toward smoking increased distinctly in the 1980s and 1990s, as measured by national polls and imposition of workplace and restaurant smoking bans. But even as the tobacco suits mounted, large majorities of poll respondents said they opposed pinning liability on the companies, as opposed to smokers.

Similarly, popular support for modest forms of gun control, such as requiring permits and buyer background checks, has remained steady and strong, but most poll respondents express opposition to government suits against gunmakers. A survey released in January of 1,008 adults by DecisionQuest, a jury-consulting firm in Los Angeles that has done work for the gun industry, found that 66% opposed such suits and only 19% supported them, with 15% unsure.

Prof. Daynard maintains that, in contrast to answering abstract poll questions, the experience of seeing first-hand the evidence of alleged corporate deceit has inspired juries in a handful of smokers' suits to hold manufacturers liable—and that the possibility of this recurring in a state suit drove cigarette makers to settle. If similar

evidence emerges about the gun industry, he adds, it would face the same threat.

Phil Anthony, DecisionQuest's chief executive, sees a distinction, though. A majority of focus-group participants interviewed by his company tend to associate the Second Amendment right "to keep and bear arms" with other constitutionally protected freedoms. The Second Amendment doesn't ban suits against gun makers, but it has deep meaning for many Americans, especially in the South and West, Mr. Anthony says. Millions of law-abiding people still hunt. There is no tobacco equivalent to the politically potent NRA, with its three million dues-paying members.

In contrast, says Mr. Anthony, as legal attacks on tobacco mounted in the mid-1990s, few people in focus groups or on actual juries spoke up for smokers' rights. Many smokers want to quit.

Mixed Messages

The jury in the Brooklyn case reflected the assessments of both Messrs. Anthony and Daynard. Interviews with five of the 11 jurors revealed that most members of the panel saw themselves as sympathetic to manufacturers. But a persistent minority persuaded the majority to interpret certain manufacturer contracts with wholesalers as evidence of "negligent distribution" by 15 of the 25 defendants. Three defendants were ordered to pay a total of \$520,000 in damages.

What concerned some jurors about the contracts was that some manufacturers had failed to ban wholesalers from selling handguns to dealers who operate at gun shows or who don't have stores—two sources of illegal gun trafficking, according to law-enforcement officials.

This evidence may lack the drama of documents that allegedly show that cigarette manufacturers covertly manipulated nicotine levels to addict smokers. In Brooklyn, though, it was enough for a breakthrough verdict—the first ever to hold the industry collectively responsible for a criminal shooting.

The question is whether that verdict was an aberration or an analog to the handful of successful smokers' suits that presaged the settlement of state litigation against the tobacco industry.

Jumping the Gun?

Attacks on Firearms Echo Earlier Assaults On Tobacco Industry

But Contrasts Are Big, Too:
No Leaked Memos Yet,
Nor Same Sums at Stake

'Cigarettes Can Only Kill You'

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

Tobacco law suits indisputably spawned the new wave of suits against the gun industry. In the escalating public debate over mass-injury litigation, the two tend to be equated, as if gun makers will inevitably tread the same path.

Not so fast.

Depicting themselves as children of the tobacco crusade, a determined group of antigun lawyers has mounted a serious threat to the way the gun industry does business that would have been unimaginable only two years ago. But at least some veterans of the tobacco fight aren't yet convinced the analogy holds up. David Kessler, the former chief of the U.S. Food and Drug Administration who played a critical role in pressuring tobacco companies to the bargaining table, says he still doesn't "see the comparison" between cigarette and gun makers.

On the Sidelines

Attorney Richard Scruggs helped lead the courtroom offensive on tobacco. But he has turned down invitations to get involved in the gun suits. Likewise, Prof. Laurence Tribe of Harvard Law School, who helped shape strategy against cigarette makers, rejected feelers made on behalf of gun foes.

The legal theory behind the gun suits—that governments should be reimbursed for public costs related to gun violence—was adapted from the tobacco suits brought by state attorneys general. But, as suggested by the reticence of Messrs. Kessler, Scruggs and Tribe, the legal fight over guns so far lacks elements that were critical to achieving the states' landmark settlement with the tobacco industry.

Guns, while controversial, can be used for self-protection, target shooting and law enforcement, and thus can't be demonized to the degree tobacco was, says Mr. Scruggs, who keeps a handgun at home. "Cigarettes can only kill you," he says.

vealing corporate deceit badly weakened tobacco defenses, notes Dr. Kessler, now dean of Yale Medical School. They haven't surfaced—at least not yet—in the gun story. Conditioned by real-life headlines and Hollywood legal thrillers, potential jurors, judges and politicians now expect this kind of "smoking gun" evidence before taking mass-injury suits seriously, says Harvard's Prof. Tribe.

But while cigarette makers for decades disputed the fundamental deadliness of smoking, firearm companies don't hide the fact that guns are designed to kill.

In private, some lawyers suing the firearm industry concede that, as one puts it, "Guns are more complicated than cigarettes." The mere names of some of the companies being sued—Coll's Manufacturing Co. and Smith & Wesson Corp., for example—bring to mind for many people images of frontier individualism or honorable law enforcement.

In another important respect, gun suits can't imitate their predecessors: The dollars aren't there. With annual U.S. sales of \$45 billion, cigarette manufacturers had the wherewithal to settle with the states for a total of \$246 billion over 25 years. Annual gun manufacturer sales total \$1.4 billion.

Shallow Pockets

Mr. Scruggs says he isn't convinced "that there's so much money at the end of the day" for a potential settlement. With an estimated 230 million guns already in circulation in the U.S., the Pascagoula, Miss., attorney questions whether lawsuits are the best way to curb violence. And he also acknowledges that unprecedented fees from the cigarette wars have dulled some lawyers' pecuniary appetites. His own small firm stands to take home hundreds of millions for its tobacco work.

Fatigue is another issue for some top tobacco antagonists. "We need to recharge our batteries," Mr. Scruggs says.

But a consortium of plaintiffs' firms that tried unsuccessfully to mount a national class-action suit on behalf of smokers—and therefore might be hungrier than Mr. Scruggs—has turned its attention to guns. Headed by New Orleans attorney Wendell Gauthier, the group has already signed up that city as a client and is negotiating with several other municipalities about representing them.

Mr. Gauthier, who despite missing out on the big tobacco settlements has won many millions for plaintiffs over the years, warns that it is far too early to write off gun lawsuits. The tobacco suits at first were ridiculed as fanciful, he notes. "We're going to see whistleblowers coming out of the woodwork on guns," he predicts. And he sees last month's partial victory in federal court in Brooklyn, N.Y., by a group of individual shooting victims who sued gun companies as a promising sign for the municipal litigation.

Although his group would take 30% of any jury award to New Orleans, or 20% of a settlement, Mr. Gauthier says he isn't in the gun fight primarily for the money. He maintains that if enough municipalities sue the gun industry simultaneously, companies will be forced to agree to long-re-

Please Turn to Page A6, Column 1

Reluctant Witness

The only potential gun-industry turn-out to surface so far hasn't had any discernible impact. Robert Hass, a former senior vice president for marketing at Smith & Wesson, a unit of Britain's Tomkins PLC, said in a deposition in the Brooklyn lawsuit that gun companies could do more to police distribution of their wares. But because of his reluctance to speak publicly, combined with health problems, the Connecticut retiree didn't appear at trial to elaborate. Lawyers familiar with the situation say he isn't eager to do so in other cases.

A defector of a different sort also helped push tobacco interests to seek a truce. Bennett LeBow, a New York financier who controls Liggett Group Inc., the weakest of the industry's five largest players, agreed in 1996 to cut his losses and settle four state suits at a time when other tobacco firms were vowing never to surrender. A year later, he again broke with rivals to declare nicotine addictive and admit that cigarette makers target minors.

More fractious and diverse than the tobacco business, the gun industry could conceivably produce a renegade who would effectively turn state's evidence. But so far, that hasn't happened. The recent ousting of a firearms trade group executive who opened back-channel communication with antigun lawyers has been seen as a sign that industry hard-liners aligned with the National Rifle Association are trying to take control of the litigation.

'Pressure Will Build'

Some veterans of the tobacco wars nevertheless see the same sort of process beginning again with guns. Richard Daynard, a law professor at Northeastern University in Boston who for 15 years has advocated tobacco suits, is leading the first academic conference to foster gun suits, scheduled for May. He has changed the title of his strategic-litigation course to: "Controlling Tobacco, Guns & Other Politically Protected Hazards."

"Political pressure will build for mayors to bring these cases against gun companies, just as it did for the attorneys general with cigarettes," Prof. Daynard says. If the number of cases grows, "the possibility of even a few breaking through" becomes a serious threat. "The connection between cigarettes and guns," he continues, "is that both used political influence to escape safety regulation, and eventually people got tired of that and turned to the courts" to rein them in.

Popular opinion of makers of cigarettes and guns is hard to discern. Hostility toward smoking increased distinctly in the 1980s and 1990s, as measured by national polls and imposition of workplace and restaurant smoking bans. But even as the tobacco suits mounted, large majorities of poll respondents said they opposed pinning liability on the companies, as opposed to smokers.

Similarly, popular support for modest forms of gun control, such as requiring permits and buyer background checks, has remained steady and strong, but most poll respondents express opposition to government suits against gunmakers. A survey released in January of 1,000 adults by DecisionQuest, a jury-consulting firm in Los Angeles that has done work for the gun industry, found that 66% opposed such suits and only 19% supported them, with 15% unsure.

Prof. Daynard maintains that, in contrast to answering abstract poll questions, the experience of seeing first-hand the evidence of alleged corporate deceit has inspired juries in a handful of smokers' suits to hold manufacturers liable—and that the possibility of this recurring in a state suit drove cigarette makers to settle. If similar

evidence emerges about the gun industry, he adds, it would face the same threat.

Phil Anthony, DecisionQuest's chief executive, sees a distinction, though. A majority of focus-group participants interviewed by his company tend to associate the Second Amendment right "to keep and bear arms" with other constitutionally protected freedoms. The Second Amendment doesn't ban suits against gun makers, but it has deep meaning for many Americans, especially in the South and West, Mr. Anthony says. Millions of law-abiding people still hunt. There is no tobacco equivalent to the politically potent NRA, with its three million dues-paying members.

In contrast, says Mr. Anthony, as legal attacks on tobacco mounted in the mid-1990s, few people in focus groups or on actual juries spoke up for smokers' rights. Many smokers want to quit.

Mixed Messages

The jury in the Brooklyn case reflected the assessments of both Messrs. Anthony and Daynard. Interviews with five of the 11 jurors revealed that most members of the panel saw themselves as sympathetic to manufacturers. But a persistent minority persuaded the majority to interpret certain manufacturer contracts with wholesalers as evidence of "negligent distribution" by 15 of the 25 defendants. Three defendants were ordered to pay a total of \$520,000 in damages.

What concerned some jurors about the contracts was that some manufacturers had failed to ban wholesalers from selling handguns to dealers who operate at gun shows or who don't have stores—two sources of illegal gun trafficking, according to law-enforcement officials.

This evidence may lack the drama of documents that allegedly show that cigarette manufacturers covertly manipulated nicotine levels to addict smokers. In Brooklyn, though, it was enough for a breakthrough verdict—the first ever to hold the industry collectively responsible for a criminal shooting.

The question is whether that verdict was an aberration or an analog to the handful of successful smokers' suits that presaged the settlement of state litigation against the tobacco industry.

Subject: Mar 16 Committee Hearing on House Bill 103

Date: Sat, 06 Mar 1999 12:14:34 -0900

From: Coors, Mike <mike@coors11.matnet.com>

To: Representative Andrew Halter <legis.state.ak.us>

Please call for the hearing when the Community and Regional Affairs Committee meets on the 23rd. Because I will be at work, I will not be able to attend. Please call me if you need any information.

To: USA, Washington

I write in full support of HB 103. I would like to see an amendment to this bill however. That would be to hold criminally responsible for any governmental employee or elected official to file a lawsuit against any gun manufacture such as Chicago, Brooklyn, New Orleans, Atlanta, Miami, etc. have filed. I would copy the language used in the Florida legislation which would make it a Felony with a 5 year prison term. The reason for this drastic measure is that although Georgia has signed into law legislation similar to this, the Atlanta Mayor is still going with the suit. This is because there is no punitive damage to disregard State law!

This legislation, HB 103 is even more important today than it was when it was first introduced. For as of Thursday, 4 Mar 99, a bill has been introduced in the Washington, D.C. Senate Gun Industry Accountability Act. This bill would give Federal Funds for taxpayer dollars to those counties, cities and States who file a frivolous lawsuit against the firearms industry. Senator Schumer and Lautenberg made it very clear that they are out to bankrupt the firearms industry, both guns and ammunition manufactures. They made it plain in their Press Conference that just the suits themselves will be enough to kill the industry by spending dollars and time defending these frivolous lawsuits. There is no intention on winning any of the suits, just to bankrupt the industry.

We have written to all the Senators urging the defeat of this bill, prior to ever getting on the floor for a vote. How does this impact HB 103? Simply that even 'if' the Gun Industry Accountability Act were to pass, that no municipality, city or the state government could sue much less get punitive damage.

We urge the passage of HB 103, with our suggested amendment. The continuous attacks against the American and Alaskan citizens who enjoy the freedom of the Constitution and Bill of Rights must be defeated pro actively.

Sincerely
Mike and Sandy Coors
P.O. Box 4229
Palmer, AK 99645
(907) 745-6779

Regards
Mike Coors



March 9, 1999

Congress Targets Gun Lawsuits

AP INDEXES THE STATES NEWS SERVICES BUSINESS TECHNOLOGY ENTERTAINMENT

Filed at 3:56 p.m. EST

By The Associated Press

WASHINGTON (AP) -- The legal battle cities have launched against the gun industry got a new player Tuesday: Congress.

One lawmaker filed legislation that would prohibit such suits and another promised a bill that would guarantee cities the right to sue.

Rep. Bob Barr, R-Ga., the National Rifle Association's point man in Congress, led a bipartisan group of two dozen lawmakers on a bill to hold gun manufacturers and distributors accountable for gun violence.

"This is a national issue and it cries out for a national remedy," said Barr, contending the lawsuits would destroy the constitutional right to bear arms while undermining the integrity of the nation's legal and free enterprise systems.

But Sen. Barbara Boxer, D-Calif., said she intends to introduce legislation that would guarantee cities the right to sue gun manufacturers and distributors.

"The federal government sends billions of dollars to local communities to fight crime," she said. "If local governments believe the fight against crime is being hampered because of a mass proliferation of guns, I believe it is in the national interest to allow them to take action in court."

Following the successful state lawsuits against tobacco companies, six cities -- Atlanta, New Orleans, Chicago, Miami and Bridgeport, Conn. -- have filed lawsuits seeking to force the gun industry to take



ENTERTAINMENT
[Restaurants](#)
[Movies](#)
[Music](#)
[Theater & Arts](#)
[Bars & Nightlife](#)
[Art & Museums](#)
[Books & TV](#)
[Sports](#)
[Getaways](#)

SHOPPING
[Sales](#)
[Events](#)
[Coupons](#)
[Yellow Pages](#)

CLASSIFIED
[Real Estate](#)
[Autos](#)
[Jobs](#)

COMMUNITY
[About Our City](#)
[Join a Group](#)
[Create a Group](#)
[Update a Group](#)

LIFE
[Food](#)
[Home](#)
[Fashion & Style](#)
[Health & Fitness](#)
[How to News](#)

NEIGHBORHOODS
[Near My Home](#)
[Near My Office](#)
[Other Areas](#)

NEW YORK

ADVERTISEMENT

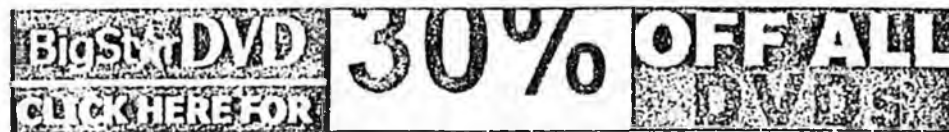
Gun lobbyists have taken note of a ruling last month in Federal District Court in Brooklyn. In a lawsuit filed by private citizens, a jury held 9 of 25 gun manufacturers liable for three shootings that involved illegally obtained handguns.

So far, only in Georgia has the Legislature enacted a law to block a lawsuit. Atlanta is in this case, although similar legislation is being considered in at least 12 other states. The Florida Legislature is considering a bill that would make it a felony for a local official to file a lawsuit against the gun industry.

But tackling the offensive state-by-state is expensive and time-consuming. Barr's bill would accomplish the same feat all at once, but its prospects are uncertain.

The proposal puts Republican lawmakers in a bit of a philosophical bind. They could wind up defending a law that undermines local governments and leaves them open to the question of whether they defend local governments or the gun industry.

Barr said the decision was simple: they will defend the status quo. "There is nothing more conservative than maintaining the status quo," he said.

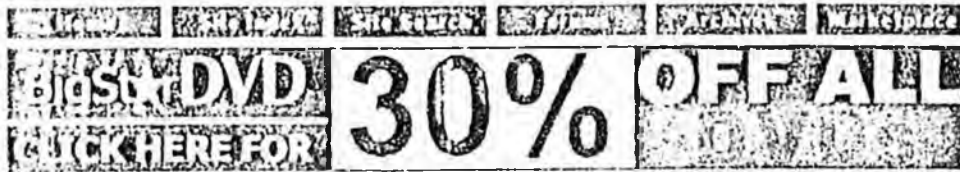


[Home](#) | [Site Index](#) | [Site Search](#) | [Forums](#) | [Archives](#) | [Marketplace](#)

[Science](#) | [Sports](#) | [Weather](#) | [Editorial](#) | [Op-Ed](#) | [Arts](#) | [Automobiles](#) | [Books](#) | [Diversions](#) | [Job Market](#) | [Real Estate](#) | [Travel](#)

[Help](#) | [Feedback](#) | [Classifieds](#) | [Services](#) | [New York Today](#)

Copyright 1999 The New York Times Company



March 10, 1999

A Republican Seeks to Ban Suits Against Gun Makers

Related Articles

- [Tobacco-Busting Lawyers on New Gold-Dusted Trails](#)
- [Issue in Depth: Tobacco Debate](#)
- [Issue in Depth: America Under the Gun](#)



Forum

- [Join a Discussion on Gun Control](#)

By LIZETTE ALVAREZ

WASHINGTON -- Opening a second front in the latest battle to protect the gun industry, Representative Bob Barr Tuesday introduced legislation that would block the lawsuits filed by cities against gun manufacturers.

Barr, a Georgia Republican who is a board member of the National Rifle Association, the country's largest gun lobbying organization, said that Federal legislation was needed to preserve free enterprise and stymie get-rich schemes by trial lawyers. The bill would bar lawsuits that seek to hold gun manufacturers and dealers liable when someone commits a crime with one of their weapons, provided that the firearm is legal and not defective and that the customer is not a known criminal.

"If these lawsuits are allowed to proceed, it will really be 'Katie bar the door,'" Barr said, "because there will be no industry in America that will be safe from these abusive and predatory lawsuits."

With cities now challenging gun manufacturers in court, the longtime struggle over gun control and the rights of gun owners has been infused with energy and importance on Capitol Hill this year.

The new strategy by local governments to recover damages from gun makers has stoked the Democrats' campaign to crack down on firearms after having failed to get any gun-control legislation passed since the Republicans won control of Congress in 1994. In the past two weeks alone, the Democrats have introduced

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: Amendment to AS 14.05.010 BRJ
Maintenance and repair of roads Department: _____
 Sponsor: REP. D. Auerman
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues Thousands of Dollars

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation would have no fiscal impact on the department.

Prepared by: Yvonne Chase, Acting Director *Yvonne Chase* Phone: 465-4709
 Division: Division of Administrative Services Date: 3/10/99
 Approved by Commissioner: *Mike Swin* Date: 3/10/99
 Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office