

HB

184

SENATE COMMITTEE REPORT

DATE: 4/25/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

HOUSE BILL NO. 184 am

HB 184 MUNICIPAL FIREARM ORDINANCES

"An Act relating to firearms."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

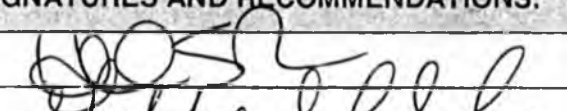
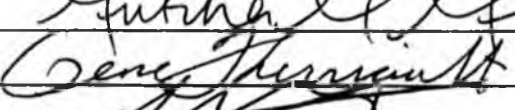
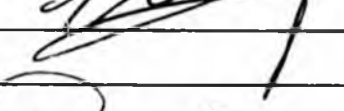
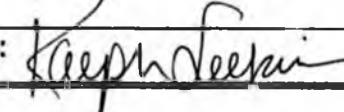
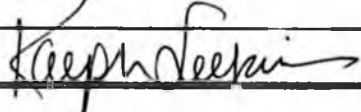
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
				X
			X	
	✓			
	✓			
CHAIR: 	✓			

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 28, 2005

SUBJECT: Amendment AA.2 to HB 184 am; (Work Order No. 24-LS\AA.2)

TO: Senator Ralph Seekins
Chair of the Senate Judiciary Committee

FROM: Pam Finley 
Revisor of Statutes

Enclosed is the amendment you requested. While we have tried to follow the model you provided, certain aspects of the amendment are unclear to me. Line 5 of the amendment says "Notwithstanding any other provision of law," but subsection (b) says that the section does not limit a person's rights or remedies under other law. These two statements seem inconsistent. Second, subsection (a) appears to prohibit A from telling B that B may not possess a firearm while B is in A's car. Is that intended? If so, there may be Due Process problems with this provision.

PF:med
05-317.mcd

Enclosure

AMENDMENT #1

OFFERED IN THE SENATE

TO: HB 184 am

1 Page 1, lines 3 - 11:

2 Delete all material.

3 Insert new bill sections to read:

4 ~~* Section 1. The uncodified law of the State of Alaska is amended by adding a new~~
5 ~~section to read:~~

6 ~~(FINDINGS. The individual right to keep and bear arms being a constitutionally~~
7 ~~protected right, the legislature finds the need to provide uniform laws throughout the state.~~

8 * Sec. 1. AS 29.35.145(a) is repealed and reenacted to read:

9 (a) The authority to regulate firearms is reserved to the state and, except as
10 specifically provided by statute, a municipality may not enact or enforce an ordinance
11 regulating the possession, ownership, sale, transfer, use, carrying, transportation,
12 licensing, taxation, or registration of firearms.

13 * Sec. 2. AS 29.35.145 is amended by adding new subsections to read:

14 (c) Municipalities may enact and enforce ordinances

15 (1) that are identical to state law and that have the same penalty as
16 provided for by state law;

17 (2) restricting the discharge of firearms in any portion of their
18 respective jurisdictions where there is a reasonable likelihood that people, domestic
19 animals, or property will be jeopardized; ordinances enacted or enforced under this
20 paragraph may not abridge the right of the individual guaranteed by art. I, sec. 19,
21 Constitution of the State of Alaska, to bear arms in defense of self or others;

22 (3) restricting the areas in their respective jurisdictions in which
23 firearms may be sold; a business selling firearms may not be treated more restrictively

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the other businesses located within the same zone; and

(4) prohibiting the possession of firearms in the restricted access area of municipal government buildings: the municipal assembly shall post notice of the prohibition against possession of firearms at each entrance to the restricted access area.

(d) In this section,

(1) "firearms" includes firearms, or any other element relating to firearms or parts thereof including ammunition and reloading components;

(2) "restricted access area" means the area beyond a secure point where visitors are screened and does not include common areas of ingress and egress open to the general public.

(e) The prohibition on taxation in (a) of this section does not include imposition of a sales tax that is levied on all products sold within a municipality."

AMENDMENT

#2

OFFERED IN THE SENATE

TO: HB 184 am

1 Page 1, following line 11:

2 Insert a new bill section to read:

3 **** Sec. 3.** AS 18.65 is amended by adding a new section to read:

4 **Article 10A. Firearms.**

5 **Sec. 18.65.800. Possession of firearms in motor vehicles. (a)**

6 Notwithstanding any other provision of law, the state, a municipality, or a person may
7 not adopt or enforce a law, ordinance, policy, or rule that prohibits or has the effect of
8 prohibiting an individual from possessing a firearm while that individual is within a
9 motor vehicle or prohibiting an individual from storing a firearm that is locked in the
10 individual's motor vehicle while the motor vehicle is otherwise legally parked in or on
11 state or municipal property or another person's property. This section applies only to
12 possession of a firearm by an individual who may legally possess a firearm under state
13 and federal law.

14 (b) This section does not limit a person's rights or remedies under any other
15 law.

16 (c) The state, a municipality, or a person is not liable for any injury or damage
17 resulting from the storage of a firearm in the vehicle of ~~an~~ individual in accordance
18 with this section."

Added property of the individual's vehicle
another #1

Brian Judy's Answers
to
Senator Guess's Questions

8.25.010 Possession of weapon with intent to assault
State law has four degrees of assault found in AS 11.41.200, 210, 220 & 230. Third degree assault includes "recklessly places another person in fear of imminent serious physical injury by means of a dangerous instrument" and "with intent to place another person in fear of death or serious physical injury to the person or the person's family member makes repeated threats to cause death or serious physical injury to another person." I can't imagine "intent" could be proven if there hadn't been some threat and/or another person was not in fear of imminent harm.

8.25.020 Concealed weapons
The provision of this ordinance that requires a permit to carry a concealed firearm needs to be preempted, as it is contrary to state law as amended by HB 102 in 2003.

8.25.030 Discharge
Specifically allowed in language of HB 184

8.25.040 Drive-by shooting
There are numerous state laws that address this behavior including 11.61.190(a)(2), 11.61.190(a)(3), 11.61.200(a)(11), and 11.61.210(a)(2).

8.25.050 Firearms on premises licensed for sale of alcohol
Anchorage prohibits all possession. State law prohibits possession of LOADED firearm (11.61.220(a)(2)) and prohibits possession while intoxicated (11.61.210(a)(1)). State law is preferable and would be better if possession was allowed provided the carrier was not intoxicated AND was not consuming. If a person is in an establishment and is not consuming there is no reason to restrict them. For instance, consider an individual who takes his family out to dinner to a restaurant that serves alcohol but who is not consuming. That person should not be restricted.

8.25.060 Firearms on school grounds
Covered in AS 11.61.210(a)(7).

8.25.070 Provision of firearm to violent minor by parent or guardian
I didn't find a specific statute but such an act should be able to be prosecuted under Reckless Endangerment (11.41.250). Additionally, this is clearly a violation of Federal law.

8.25.080 Duty of parent or guardian who knows minor unlawfully possesses dangerous weapon
I didn't find a specific statute but, again, Reckless Endangerment should be broad enough to cover this.

8.25.90 Sale or furnishing of firearms to minors At least partially covered (11.61.210(a)(6)).

Brian Hove

From: Brian Judy [110230.536@compuserve.com]
Subject: RE: state law - anchorage ordinances
Thursday, April 28, 2005 4:36 PM
Brian Hove; Joe Michel

FYI. 1 of 2

-----Forwarded Message-----

From: "Sue Wright", INTERNET:Sue_Wright@legis.state.ak.us
To: "Brian Judy", [110230.536]

Date: 4/28/2005 4:10 PM

RE: RE: state law - anchorage ordinances

Brian page two the new section (b) 1 will not fly as employers on the North Slope prohibit the carrying of a firearm anywhere on the slope.

-----Original Message-----

From: Brian Judy [mailto:110230.536@compuserve.com]
Sent: Thursday, April 28, 2005 2:49 PM
To: Sue Wright
Subject: RE: state law - anchorage ordinances

Sue,

I am fine letting Senator Seekins do what he pleases. Have your boss talk to him to coordinate and let me know the plan.

Brian

----- Internet Header -----

Sender: Sue_Wright@legis.state.ak.us
Received: from mxjnu00.legis.state.ak.us (mxjnu00.legis.state.ak.us [146.63.202.105])
by siaaglaa.compuserve.com (8.12.11/8.12.7/SUN-2.17) with ESMTTP id j3SNAt6j002883
for <110230.536@compuserve.com>; Thu, 28 Apr 2005 19:10:55 -0400 (EDT)
Received: from [146.63.202.81] (helo=EXCHANGE00.akleg.org)
by mxjnu00.legis.state.ak.us with esmtp (Exim 4.41)
id 1DRIAI-0004rp-D5
for 110230.536@compuserve.com; Thu, 28 Apr 2005 15:11:26 -0800
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charset="us-ascii"
Content-Transfer-Encoding: quoted-printable
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Subject: RE: state law - anchorage ordinances
Date: Thu, 28 Apr 2005 15:10:46 -0800
Message-ID: <D2B5460B59633943B79230796EA9391D024596FD@EXCHANGE00.akleg.org>
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: state law - anchorage ordinances
Thread-Index: AcVMRH52YRnl6nYjScmvijae+6uInAAArxcg
From: "Sue Wright" <Sue_Wright@legis.state.ak.us>
"Brian Judy" <110230.536@compuserve.com>
X-Virus-Scanned: clamd / ClamAV version 0.75.1, clamav-milter version 0.75c
on siaaglaa.compuserve.com
X-Virus-Status: Clean

Brian Hove

From: Brian Judy [110230.536@compuserve.com]
To: Thursday, April 28, 2005 4:36 PM
Brian Hove; Joe Michel
Subject: RE: state law - anchorage ordinances

FYI. 2 of 2

-----Forwarded Message-----

From: "Sue Wright", INTERNET:Sue_Wright@legis.state.ak.us
To: "Brian Judy", [110230,536]

Date: 4/28/2005 4:35 PM

RE: RE: state law - anchorage ordinances

Brian Mike does not have time to talk to the Senator. He is in two places at once. No I don't have the ammendments and don't expect to have them as is the norm in Senate Judiciary. Mike is concerned that the section you wrote is not acceptable to him as on the North Slope of Alaska has their own rules for their protection. If this ammendment is drafted to include that section we will ask the bill be held until it is removed.

Sue Wright

-----Original Message-----

From: Brian Judy [mailto:110230.536@compuserve.com]
Sent: Thursday, April 28, 2005 3:20 PM
To: Sue Wright
Subject: RE: state law - anchorage ordinances

Are you referring to the amendments? Are they drafted yet? If so, please send me a copy. My fax is 916/448-7469. Has your boss talked to Senator Seekins?

----- Internet Header -----

Sender: Sue_Wright@legis.state.ak.us
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for <110230.536@compuserve.com>; Thu, 28 Apr 2005 19:35:30 -0400
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Thread-Topic: state law - anchorage ordinances
Thread-Index: AcVMSNaj+w5UgPpWQSeqnSFH4WZ7xgAATYLA
From: "Sue Wright" <Sue_Wright@legis.state.ak.us>
"Brian Judy" <110230.536@compuserve.com>
X-Virus-Scanned: clamd / ClamAV version 0.75.1, clamav-milter version 0.75c
on liaag2ac.mx.compuserve.com

Brian Hove

From: Brian Judy [110230.536@compuserve.com]
S: Thursday, April 28, 2005 4:43 PM
T: Sue Wright
Subject: RE: state law - anchorage ordinances

Sue,

I will pass this on to Senator Seekins. If he desires to move the bill without the vehicle language, NRA is ok with that. NRA views the preemption amendment as very important, however. Bottom line though, as you suggested and as I agreed, we will do as the Chair pleases.

Brian

Brian love

From: Brian Judy [110230.536@compuserve.com]
Thursdays, April 28, 2005 1:32 PM
Brian Hove
Subject: state law - anchorage ordinances

Per my phone message, following is a list of the Anchorage weapon ordinances with a comparison to state law. Please call to discuss (916/446-2455).

8.25.010 Possession of weapon with intent to assault
State law has four degrees of assault found in AS 11.41.200, 210, 220 & 230. Third degree assault includes "recklessly places another person in fear of imminent serious physical injury by means of a dangerous instrument" and "with intent to place another person in fear of death or serious physical injury to the person or the person's family member makes repeated threats to cause death or serious physical injury to another person." I can't imagine "intent" could be proven if there hadn't been some threat and/or another person was not in fear of imminent harm.

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8.25.080 Duty of parent or guardian who knows minor unlawfully possesses dangerous weapon
I didn't find a specific statute but, again, Reckless Endangerment should be broad enough to cover this.

8.25.090 Sale or furnishing of firearms to minors At least partially covered (11.61.210(a)(6)).



#15184

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION

555 CAPITOL MALL SUITE 625
SACRAMENTO, CALIFORNIA 95814
(916) 446-2455
(916) 448-7469 - FAX
<http://nraila.org>

Fax Transmittal Cover Sheet

Message To:

BRIAN HOVE / SENATOR SEEKINS

Date:

4/27/05

Time:

10:50

AM PM
(specify time)

Fax Number To:

907/465-5241

Office #:

Message From:

Brian Judy

Fax Number From:

(916) 448-7469

E-Mail:

110230.536@compuserve.com

of pages

3

(including cover Sheet):

I TALKED WITH EDDIE GRASSER ABOUT THE STORAGE OF FIREARMS
AT RESTRICTED ACCESS AREA SECURE POINTS. WE AGREED THAT IF THE
STATE ISN'T GOING TO PROVIDE STORAGE FACILITIES ITS NOT POLITICALLY FAIR
TO IMPOSE SUCH A MANDATE ON LOCALS SO I TOOK THAT OUT. WE WOULD
LIKE TO TRY TO AMEND IN THE "VEHICLE IN PARKING LOTS" LANGUAGE.
WE UNDERSTAND THAT MIGHT ADD MORE OPPOSITION BUT WE FEEL ITS
FAIRLY IMPORTANT AND ARGUABLE. GIVE ME YOUR THOUGHTS... LANGUAGE
FOR BOTH PROVISIONS IS ATTACHED. THANKS FOR YOUR HELP!

BRIAN

If a problem should occur with this fax,
please call 916/ 446-2455

Repeal and reenact the existing preemption statute as follows:

29.35.145

(a) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. All authority to regulate firearms shall be reserved to the state and, except as specifically provided by the Legislature by statute, a municipality may not enact or enforce an ordinance regulating the possession, ownership, sale, transfer, use, carrying, transportation, licensing, taxation, or registration of firearms.

(b) Municipalities may enact and enforce ordinances:

(1) that are identical to state law and which have the same penalty as provided for by state law;

(2) restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that people, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 19 of the state Constitution to bear arms in defense of self or others;

(3) restricting the areas in their respective jurisdictions in which firearms may be sold, but a business selling firearms may not be treated more restrictively than other businesses located within the same zone; and

(4) prohibiting the possession of firearms in the restricted access area of municipal government buildings.

(c) As used in this section, the term "firearms" includes firearms, or any other element relating to firearms or parts thereof, including ammunition and reloading components.

(d) As used in (b) (4) of this section, "restricted access area" is the area beyond a secure point where visitors are screened and does not include common areas of ingress and egress open to the general public. The local legislative authority shall post a notice of the prohibition against possession of firearms at each entrance to the restricted access area.

(e) The prohibition on taxation in (a) does not include imposition of the regular sales tax that is added on to all products sold within a municipality.

(f) This section applies to home rule and general law municipalities.

Revised 4/27/05

NEW SECTION. Possession of Firearms in Motor Vehicles

(a) This chapter applies only to possession of a firearm by an individual who may legally possess a firearm.

(b) (1) Notwithstanding any other law and except as provided in (b) (2), a person, including a government entity, a corporation, a firm, a trust or partnership or an association, may not adopt or enforce a law, policy or rule that prohibits or has the effect of prohibiting an individual from possessing a firearm while that individual is within a motor vehicle or prohibiting an individual from storing a firearm that is locked in the individual's motor vehicle while the motor vehicle is otherwise legally parked in or on the person's property.

(2) Subsection (1) does not apply to an individual who possesses a firearm in violation of federal law.

(c) (1) An individual may bring a civil action to enforce the provisions of (b).
(2) If a person violates (b), the court, in an action brought under (c) (1), may:
(i) award court costs and attorney's fees, in addition to actual damages, to the prevailing individual; and
(ii) enjoin further violations of this chapter.

(d) This chapter does not limit a person's rights or remedies under any other state or federal law.

(e) A person is not liable for any injury or damage resulting from the storage of a firearm in the vehicle of another in accordance with this section.

*delete
+ renumber*

4/25

STATE OF ALASKA

**REPRESENTATIVE
MIKE CHENAULT**

Official Business

Interim:
145 Main St. Loop, Second Floor
Kenai, Alaska 99611
(907) 283-7223
Fax: (907) 283-3075



HOUSE OF REPRESENTATIVES

Session:
Capitol Building, Room 432
Juneau, Alaska 99801-1182
(907) 465-3779
Toll Free: (800) 469-3779
Fax: (907) 465-2833

Sponsor Statement

HB 184 "An act relating to firearms"

This bill was introduced to ensure that citizens be able to look to one law as the single final authority regarding firearm regulation. This bill will guarantee consistency in firearm law within the State of Alaska.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 184
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Municipal Firearm Ordinance RDU: Comm Assist & Ec Dev (405)
 Component: Community Advocacy

Sponsor: Chenault, Stoltze, Neuman, Dahlstrom
 Requester: Harris Component No.: 2703
House Community & Regional Affairs

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation requires that municipalities may not enact or enforce an ordinance regulating the possession, sale, transfer, use, or transportation of firearms that is inconsistent with state law.

It would not create a fiscal impact on the operations of the department.

Prepared by: Michael Black, Director Phone 269-4578
 Division: Community Advocacy Date/Time 3/21/05 2:23 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/21/2005
 Agency: Commerce, Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 184
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to firearms." RDU CRIMINAL
 Component Criminal Justice Litigation
 Sponsor Representative Chenault
 Requester House Community and Regional Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 29.35.145 (Municipal Powers and Duties. Regulation of firearms.) by amending it prohibiting a municipality from enacting or enforcing ordinances regulating possession, sale, transfer, use, or transportation of firearms that are inconsistent with state law. The unamended language allows such ordinances if ratified by the voters.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/18/05 4:24 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/18/2005
 Agency Department of Law

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 30, 2005

SUBJECT: Sectional Summary - HB 184 (Work Order No. 24-LS0632\A)

TO: Representative Mike Chenault

FROM: Gerald P. Luckhaupt *JPL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides that a "municipality may not enact or enforce an ordinance regulating the possession, sale, transfer, use, or transportation of firearms that is inconsistent with state law."

GPL:med
05-218.med