

HB

69

<TARGET><BILL>HB 69</BILL><SUBJECT>HB
69</SUBJECT><COMM>SJUD28</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 2/28/13

FURTHER:

DATE TURNED
IN TO OFFICE: 4/5/13

Judiciary Committee considered CS FOR HOUSE BILL NO. 69(JUD)

HB 69-EXEMPT FIREARMS FROM FEDERAL REGULATION

"An Act exempting certain firearms, firearm accessories, and ammunition in this state from federal regulation; declaring certain federal statutes, regulations, rules, and orders unconstitutional under the Constitution of the United States and unenforceable in this state; providing criminal penalties for federal officials who enforce or attempt to enforce a federal statute, regulation, rule, or order regulating certain firearms and firearm accessories in this state; and providing for an effective date."

and recommends:

be replaced with SCS CS HB 69 (JUD) [] Same Title [] Technical Title Change
[] New Title/SCR No. _____

[] adopt previous SCS _____ (_____) [] Same Title [] Technical Title Change
[] New Title/SCR No. _____

[] attached amendment(s)

[] adopt _____ Letter of Intent

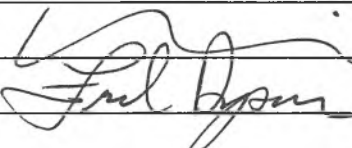
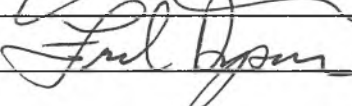
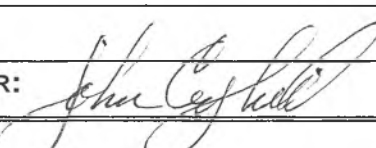
[] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
COR			✓	4
LAW			✓	5
DPS			✓	6

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	Wielechowski	✓			
	Dyson	✓			
CHAIR: 	Coghill	✓			

Good afternoon, Thank you for the opportunity to testify before this committee and address my government on this historic Bill in these historic and troubling times.

My name is Thom Buzard. I am local resident of Juneau, Alaska, a citizen of Alaska and the United States in that order. I am 55 years old, am married with children, most of which are adults with one currently serving our Country as a US Marine. We are so very proud of our son Russadell Buzard. I too served in the armed forces as a mechanic in the US Navy Sea Bees. Today I am a business owner and the current commander of the Alaska Citizen's Militia Juneau (ACMJ)

My US Marine son and I, as well as millions of other American patriots took an oath to defend and to protect our Country, its laws and Constitution; To protect it from enemies both foreign and domestic. And due to recent events I fear our citizenry may be preparing for a domestic war against our own government; The Federal Government.

I believe this because of the unprecedented and staggering purchases of ammunition, military grade equipment, construction of what appear to be detention facilities all by DHS and FEMA, Couple those facts with a President that in 2008 said he wanted to build a civilian military as well equipped and funded as the US military. Coupled with a constant on slot of continues Federal Government regulation and encroachment into our very lives and you can see why I feel this way.

Is the DHS preparing for war? Against who? This situation has many Americans concerned to the point that they have purchased all available firearms of capacity, magazines for those rifles and handguns and ammunition from the store shelves across this great country.

History can be a great, and often is, our best teacher. But when we fail to learn from history we are doomed to repeat the mistakes of the past. The history I refer to is:

- 1) In 1911, Turkey established gun control. From 1915 to 1917, 1.5 million Armenians, unable to defend themselves, were rounded up and exterminated,
- 2) In 1929, the Soviet Union established gun control. From 1929 to 1953, about 20 million dissidents, unable to defend

themselves, were rounded up and exterminated. This doesn't include the 30 million 'Uncle Joe Stalin' starved to death in the Ukraine,

- 3) China established gun control in 1935. From 1948 to 1952, 20 million political dissidents, unable to defend themselves, were rounded up and exterminated,
- 4) Germany established gun control in 1938 and from 1939 to 1945, leaving a populace unable to defend itself against the Gestapo and SS. Hundreds of thousands died as a result,
- 5) Guatemala established gun control in 1964. From 1964 to 1981, 100,000 Mayan Indians, unable to defend themselves, were rounded up and exterminated,
- 6) Cambodia established gun control in 1956. From 1975 to 1977, 1-2 million 'educated' people, unable to defend themselves, were rounded up and exterminated,
- 7) Uganda established gun control in 1970. From 1971 to 1979, 300,000 Christians, unable to defend themselves, were rounded up and exterminated. The total dead are said to be 2-3 million,
- 8) Defenseless people rounded up and exterminated in the 20th Century because of gun control: 56 million at a bare minimum.

And in our own country we too have had gun confiscation and government troops killing Americans; yes it has happened here too! There are over a hundred such events that have happened in our history.

One most notable is the Massacre at Wounded Knee, where in 1890 300 Sioux, made up of men, women and children lay dead after being ambushed by federal troops. Those facts are no easy to find in our history books but those are the facts non the less.

And what about here in Alaska One hundred and twenty-five years ago , when the United States Navy - then the only governmental authority in Alaska, the Federal government - shelled and burned the village of Angoon after a dispute and an alleged hostage situation; An indisputable fact. The fact is, our government will and has attacked and killed its own people.

And in modern times we still have events, too many to name here today except for Katrina. Where we saw the police chief of New Orleans, a man charged with protecting his community, a man that had taken an oath to

protect and defend the Constitution give the order to go door to door and confiscate firearms from law abiding citizen's in their own homes.

Yes it does appear that history is a great teacher and, that we, sometimes fail to learn from the lessons taught and then proceed to make those same mistakes again. Ask me if I think my government wants to kill me and I'll say well that just depends on how much of trouble maker I am in their eyes. I testify before you today as a law abiding citizen, a gun owner and US Navy veteran and the commander of ACMJ and I am concerned that our Central government is again, as history has taught us, out of control and planning and executing a major power grab unlike anything this country has ever scene. It may be war against the American people.

I, with all due respect, remind each member here today that you too took the oath to protect and defend both the Alaska State Constitution and the US Constitution. To protect them and us. I urge you to put back the Felony language in HB69 to give some real teeth to this Bill. By putting the Felony Language back in, We the People have more power to resist such attempts while waiting for law enforcement to arrest federal agents. We citizens will have the needed power to arrest and use what force is necessary to apprehend and detain any Federal agent that violates this law. If left as a misdemeanor our arresting powers are limited to that of a voice command.

Additionally, if this Bill includes the Felony language, we join At least 20 other states that have developed and passed some kind of firearm-related legislation recently introduced or currently pending. They are: Texas, Utah, Arizona, Alaska, Oklahoma, Pennsylvania, Wyoming, Missouri, North Dakota, South Carolina, Tennessee, Virginia, Nebraska, New Mexico, Georgia, Mississippi, Alabama, Iowa, Indiana, and Montana. We are in good company.

It is my opinion that Federal encroachment seems to know no bounds and that Nullification is an excellent way for our State to exercise the 10th Amendment in the Bill of Rights.

In closing, personally I would like to see much more of this "Nullification" concept employed; especially concerning the National Defense Authorization Act (NDAA) allowing the unconstitutional indefinite detention of American citizens on American soil without due process clearly in violation of the 5th amendment to our US Constitution.

Please stand your ground, support this Bill and include the felony language. Do not fall prey to the advice of lawyers, whom are not thinking constitutionally but advise based on precedents. Please remember that just because some judge says it is not constitutional does not necessarily constitute that he or she is correct. We definitely need this legislation, as even a I testify before you today the US Senate is still undecided as to weather the Feinstein confiscation legislation could be included. Many other States are doing this for the same constitutional reasons we are; Federal overreach. We must send this shot across the over reaching bow of the monstrous federal government and join with the other Sates that are working towards a constitutional solution to the ever growing federal power grab.

Thank you for your time. Please enter my remarks into the record.

Sources for information:

Points 1-8: <http://rense.com/general81/ligun.htm>

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MEMORANDUM

March 28, 2013

SUBJECT: Drafting Methods and Constitutional Issues -- SCS CSHB 69()
(Work Order No. 28-LS0290\I)

TO: Senator John Coghill
Attn: Rynniva Moss and Jordan Shilling

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the committee substitute draft you requested. This memo addresses a couple of issues raised by the bill, and questions that you have regarding certain constitutional issues associated with the bill that were raised in requests from Ms. Moss and Mr. Shilling. I have also attached two previous memos on related topics.

Separation of powers. This draft of the bill imposes a duty on the Attorney General to litigate infringements on the right to bear arms by changing "may" to "shall" in sec. 5 of the bill. The legislature can exercise oversight over the executive branch in a variety of ways, for example, by requiring reports and testimony, and in its budgeting decisions. It is my opinion that under separation of powers principles and the traditional prerogative of the executive, the Alaska Legislature does not have the authority to order or require the Alaska Attorney General to undertake any litigation.¹ The decision to undertake any litigation is within the discretion of the Attorney General and the executive branch.

Title Change. This draft makes an additional change to the title of the bill. Because the bill's title has been changed in the second house, a concurrent resolution will be necessary and a draft resolution was sent to your office on March 19, 2013. (Work Order No. 28-LS0693\A.)

¹ Compare *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950 (Alaska 1975) (court cannot order the Department of Law to prosecute a matter). The Alaska Supreme Court has also held that the Attorney General cannot stipulate in a court that a state statute is unconstitutional unless the unconstitutionality is obvious. *O'Callaghan v. Coghill*, 888 P.2d 1302, 1304 (Alaska 1995). In both cases the court stated that the separation of powers doctrine governed the result. In the first case, it was the prerogative of the executive branch to determine whether to prosecute a contempt case; in the second, it was the prerogative of the court, not the executive branch to determine the constitutionality of a statute.

Interstate compacts. You have asked whether an interstate compact can be undertaken to accomplish the objectives of HB 69. The states must have the approval of the United States Congress to do so:

Section 10 . . . *No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.*

U.S. Const., art. I, sec. 10. (*Emphasis supplied.*) As the United States Supreme Court has noted:

The requirement of congressional consent is at the heart of the Compact Clause. By vesting in Congress the power to grant or withhold consent, or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority. *See Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L. J. 685, 694 - 695 (1925).

Cuyler v. Adams, 449 U.S. 433, 439 - 440 (1981).

If it determines that an interstate agreement is a matter of federal concern, Congress may consent "by authorizing joint state action in advance or by giving express or implied approval to an agreement that the States have already joined." *Cuyler*, 449 U.S. at 441.

Firearms are traded in interstate commerce and thoroughly regulated by the federal government, so it seems reasonable to conclude that a compact concerning firearm regulation would require Congressional approval. States could either seek Congressional approval in advance, or present a compact to Congress for consideration. However, it does not seem likely that an interstate compact could be used to avoid federal regulation altogether.

Criminal offenses concerning interference with state constitutional rights. In connection with the bill you have inquired whether the legislature could make interference with the right to bear arms a criminal offense. There is already a criminal prohibition for interference with constitutional rights, AS 11.76.110. It seems to be intended to include the right to bear arms.²

² AS 26.23.205 provides that a person convicted of a violation of AS 11.76.110 (or AS 11.56.850, official misconduct) for "confiscating, attempting to confiscate, or ordering the confiscation of a firearm, under color of law" during a disaster emergency,

Application of state laws to federal officials. An attempt to employ state law to criminally charge federal officers from enforcing federal law is not likely to succeed. First, under 28 U.S.C. 1442(a)(1), the United States may remove to federal court any case where a federal officer or employee is charged under state law while performing his or her official duties. Thus, a criminal charge against a federal officer would be adjudicated in federal court, and likely dismissed if the federal officer was acting in the scope of the officer's authority, including the authority to enforce federal firearms laws.³

Case law is still developing. None of the Bill of Rights' protections nor those in the state constitution are unlimited or absolute. For example, the First Amendment protects free speech, but does not protect libel, slander or shouting "fire" in a crowded theater. Likewise, the Second Amendment does not prevent the imposition of certain limitations on the possession of firearms. However, the case law interpreting the right is still developing.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court struck down a District of Columbia law prohibiting the possession of handguns under the Second Amendment. The Court noted that the decision was not intended to cast doubt on prohibitions against possession of firearms by felons and the mentally ill, laws regulating the conditions and qualifications for commercial sales of weapons, laws forbidding firearms in sensitive places such as schools and government buildings, nor the historic prohibitions against dangerous and unusual weapons; the court also suggested that modern weapons used in military service such as the M-16 might also be forbidden. *Id.*, 554 U.S. at 627 - 628. However, *Heller* was a significant departure from past Second Amendment case law. As Justice Scalia noted, the case was the first in-depth examination of the Second Amendment and the decision does not clarify the entire field; the Court may be called upon to further clarify what exceptions there might be to the right. *Id.*, 554 U.S. at 635. Any new law, state or federal, can be challenged, and if challenged, it will have to be reviewed in light of *Heller*.

KJS:lnd
13-189.lnd

Enclosures

forfeits the person's appointed government office or Alaska Police Standards Council certification, among other consequences.

³ Further, 18 U.S.C. 111 prohibits interfering with a federal officer in the performance of the officer's duties.

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MEMORANDUM

March 14, 2013

SUBJECT: Combining HB 69 and SB 75 -- SCS CSHB 69()
(Work Order No. 28-LS0290\Y)

TO: Senator John Coghill
Attn: Rynniewa Moss

FROM: Kathleen Strasbaugh
Legislative Counsel

Enclosed is the draft committee substitute incorporating SB 75 into CSHB 69(JUD). The draft also incorporates certain amendments to existing language that you requested.

Title Change Required. HB 69 concerns federal policy on firearms; SB 75 (with the proposed amendments) would prohibit the use of state and municipal resources for any action implementing or aiding the implementation of any presidential order or federal law or regulation that is applied to infringe on the right to bear arms, or the right to due process under the Constitution of the State of Alaska or the United States Constitution. It further prohibits the use of state or municipal resources to implement certain provisions of federal law: the REAL ID Act of 2005 (existing AS 44.99.040), and two sections of the National Defense Authorization Act for Fiscal Year 2012. I have added a finding to sec. 1 of HB 69 to support SB 75's reference to due process rights.

SB 75 encompasses a broader range of subjects than HB 69, and HB 69's title is not broad enough to include them, so the enclosed draft has a change of title. Further, given the change to AS 44.99.500(g), the title of HB 69 must be amended to remove the reference to criminal penalties. The Constitution of the State of Alaska, art. II, sec. 13, requires that the subject of each bill shall be expressed in the title. Because the title change would be to a House bill in the Senate, a concurrent resolution would be required to suspend the Uniform Rules that prohibit changes to a bill's title in the second house. If the committee substitute is adopted, the committee may ask this office to draft a concurrent resolution at the time a committee substitute is prepared.

Single Subject Rule. SB 75 adds prohibitions against the use of state resources to implement laws that infringe on state and federal rights to bear arms and to due process, as well as against the use of state resources to implement two counterterrorism provisions

in the National Defense Authorization Act of 2012,¹ to an existing prohibition against the use of state resources for the implementation the REAL ID Act,² which concerns federal requirements for state issued driver's license and identification cards. HB 69 is concerned with declaring unconstitutional and preventing the implementation of new (not yet enacted) legislation regarding firearms and firearms accessories. The prohibition against the use of state resources for the various federal laws arguably ties these matters together, but the disparate nature of the laws may raise questions about the whether the bill complies with the single subject rule. The single subject rule is the first sentence of ar. II, sec. 13 of the Constitution of the State of Alaska, requiring (with certain specified exceptions) that "[e]very bill shall be confined to one subject." The courts have given the requirement a liberal interpretation. *Gellert v. State*, 522 P.2d 1120 (Alaska 1974). The courts have upheld such broad subjects as "land" and "criminal law and procedure." The courts rarely strike legislation down for violation of the rule, but I wanted to bring the issue to your attention.

Separation of Powers. You indicated in your request that you would like to give strong guidance to the administration to aggressively challenge infringement on the right to bear arms. You also requested two amendments that would require (rather than permit) undertaking certain legal actions, either to defend an individual who is charged with violation of a federal firearms law, or to prevent the implementation of certain actions of the federal government. The legislature can exercise oversight over the executive branch in a variety of ways, for example, by requiring reports and testimony, and in its budgeting decisions. However, under separation of powers principles and the traditional prerogative of the executive, the Alaska Legislature is without the authority to order or require the Alaska Attorney General to undertake any litigation.³ The decision to undertake any litigation is within the discretion of the Attorney General and the executive branch, so, to avoid the separation of powers issue, I have modified the new AS 44.99.500(g) to make it permissive, and have left the existing language of

¹ Sections 1021-22, concerning the detention and adjudication of persons associated with the 9/11 attacks and al-Qaeda who have attacked or plan to attack the United States or its allies.

² Current AS 44.99.040.

³ *Compare Public Defender Agency v. Superior Court*, 534 P.2d 947, 950 (Alaska 1975) (court cannot order the Department of Law to prosecute a matter). The Alaska Supreme Court has also held that the Attorney General cannot stipulate in a court that a state statute is unconstitutional unless the unconstitutionality is obvious. *O'Callaghan v. Coghill*, 888 P.2d 1302, 1304 (Alaska 1995). In both cases the court stated that the separation of powers doctrine governed the result. In the first case, it was the prerogative of the executive branch to determine whether to prosecute a contempt case; in the second, it was the prerogative of the court, not the executive branch to determine the constitutionality of a statute.

Senator John Coghill

March 14, 2013

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AS 44.99.500(d) as is. If this is not what you prefer, please call. I have made a few small modifications to the language of AS 44.99.500(g) to conform it to the existing language in HB 69.

Other Legal Issues. As I wrote to you in February with respect to another project, laws such as HB 69 are likely to be held unconstitutional if challenged in court. I am enclosing a copy of that opinion for your information. As to SB 75, I do not know if there are any funding conditions (military or homeland security grants, for example) or federal/state or interstate agreements affected by the provision in SB 75 prohibiting the use of state resources for certain provisions of the National Defense Authorization Act for Fiscal Year 2012.

Other Drafting Issues. We have made some minor wording changes to SB 75, notably referring to municipalities expressly rather than subsuming them under state agencies. The new term defines "state or municipal agency." We hope these improve readability.

Please let me know if I can be of further assistance in this matter.

KJS:lnd:ljw

13-142.lnd

Enclosures

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MEMORANDUM

February 7, 2013

SUBJECT: Exempting Firearms from Federal Regulation
(Work Order No. 28-LS0452\A)

TO: Senator John Coghill
Attn: Rynnieva Moss

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the bill you requested exempting certain firearms and firearms accessories from federal regulation and providing a criminal penalty for federal officials who attempt to enforce such federal regulation. It is my opinion that if the bill is enacted and challenged in court, these portions of the law are likely to be found unconstitutional and unenforceable. The bill also prohibits the use of state funds and resources for enforcement of such federal laws.

Drafting Matters

The bill is in the form of amendments to AS 44.99.500, enacted in 2010. AS 44.99.500 was enacted in an effort to avoid federal regulation of firearms that are made in Alaska, based on the theory that the commerce clause could not be used to authorize federal firearms regulation for purely intrastate activity. The amendments (1) add possession to the activities to be exempted from federal regulation, (2) provide criminal penalties at a felony level for enforcing or attempting to enforce federal regulation, (3) attempt to prevent the application of possible federal laws regarding semiautomatic weapons and magazines, and (4) prohibit the use of state funds and other resources for the enforcement of federal statutes, regulations, rules, or orders. As I discussed with Ms. Moss, the criminal penalty is drafted as a Class C felony.

The constitutional problems discussed below are primarily related to the first three amendment subjects above. The fourth may have implications for joint federal and state activities or mutual aid agreements, if any. However, the federal government probably can't require the state to administer a federal regulatory program related to firearms. See *Printz v. Ravalli County, Montana*, 521 U.S. 898 (1987), in which the United States Supreme Court overturned interim provisions of the Brady Handgun Violence Prevention Act, Pub. L. 103-159 that required state law enforcement officials to conduct background checks and related tasks on prospective hand gun purchasers.

Constitutional Issues

Challenges to federal firearm regulation are generally undertaken for a determination of whether a regulation is an appropriate subject for federal legislation under the commerce clause. This issue was discussed in some detail in hearings conducted at the time the legislature was considering passage of AS 44.99.500. See *Minutes*, H. Jud. Comm. (HB 186, April 6, 2009); *Minutes*, S. Jud. Comm. (HB 186, February 1, 2010); *Minutes*, S. Jud. Comm. (HB 186, February 17, 2010).¹ We summarize the discussion briefly here.

Article I, § 8 of the Constitution of the United States provides:

The Congress shall have power . . . [t]o regulate commerce with foreign nations, and among the several states and with the Indian tribes

In *United States v. Lopez*, 514 U.S. 549 (1995), the United States Supreme Court found that a federal law prohibiting the possession of a firearm near a school was not an economic activity:

[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

514 U.S. at 561. Accordingly, the Court struck down 18 U.S.C. § 922(q), the "Gun Free School Zones Act of 1990," holding that the commerce clause did not provide support for the legislation.

However, *Lopez* is not likely to save the bill, or AS 44.99.500, if either is challenged. In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Court held that the commerce clause authorized Congress to enact federal laws regulating and criminalizing activities involving controlled substances even if those activities were wholly intrastate and were pursuant to a state statutory scheme that authorized the activities. The court found that unlike the activity at issue in *Lopez*, the activities regulated by the federal controlled substances laws are fundamentally economic. The Controlled Substances Act regulates the production, distribution, and consumption of commodities for which there is an established, interstate market. Prohibiting intrastate possession of an article of commerce is a commonly utilized means of regulating commerce in that product. Limiting the activity to marijuana possession and cultivation "in accordance with state law" could not serve to place those activities outside of Congress's reach. 545 U.S. at 25-26.

¹ See also, documents linked at http://www.legis.state.ak.us/basis/get_minutes.asp?chamb=B&date1=010109&date2=011413&session=26&Root=HB186.

Senator John Coghill
February 7, 2013
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Once Congress properly adopts legislation under the commerce clause, the supremacy clause resolves any conflict between federal and state law in favor of federal law. *Id.* As Article VI, Clause 2 of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Ninth Circuit Court of Appeals upheld federal regulation of firearms produced solely within one state in *United States v. Stewart*, 451 F.3d 1071 (9th Cir. 2006). Robert Stewart manufactured homemade machine guns and machine gun kits wholly within California and was convicted of possessing a machine gun in violation of federal law. Stewart appealed and the Ninth Circuit Court of Appeals, based upon *Lopez* and another case, and before *Raich* was decided, initially reversed his conviction finding that the simple possession of homemade machines did not have a substantial effect on interstate commerce. See *United States v. Stewart*, 348 F.3d 1132 (9th Cir. 2003). After the United States Supreme Court decided *Raich*, the Supreme Court vacated the decision of the Ninth Circuit and told the court to reconsider their opinion in light of *Raich*. On remand, the Ninth Circuit found that Congress had the authority to regulate machine guns, including those that are wholly a product of intrastate commerce. The court found that guns can enter the interstate market and affect supply and demand.

The new amendments to the law compound the commerce clause problems of AS 44.99.500, in that by adding possession and a potential federal ban on certain weapons and accessories to the exemptions in the law, items that may well be obtained in interstate commerce are affected. Further, attempting to prevent federal officers from enforcing federal law presents rather clear supremacy clause issues.

Please let me know if I can be of any further assistance in this matter.

KJS:plm
13-072.lnd

Enclosure

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MEMORANDUM

January 22, 2013

SUBJECT: Federal Firearms Regulation (CSHB 69())
(Work Order No. 28-LS0290\U)

TO: Representative Mike Chenault
Attn: Tom Wright

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the draft committee substitute that you requested.

Findings

You requested that I add a paragraph to the findings in sec. 1, ch. 23, SLA 2010 that supported AS 44.99.500, when it was first adopted. The new paragraph was to be added to support AS 44.99.500 in this bill. Uncodified sections from prior years are somewhat difficult for a reader to find, and the finding you requested can stand alone. Thus, I have made the finding a new uncodified section for this bill.

I have also made a change in the language of the finding you requested from Texas House Bill 553, sec. 1(b)(6), so that its list of actions that may be declared unenforceable conforms to the list of actions in the bill. The listed items, "federal statute, regulation, rule, or order," cover all items that might have the force of law, which I understand is what the bill is intended to cover.

Please let me know if you would like these items drafted differently.

I did want to alert you to a problem with the new findings section of the bill, added in this draft. Legislative findings can be a useful way to explain the purpose of legislation, not only to a reader, but to a reviewing court. *See State v. Lewis*, 559 P.2d 630, 643 - 44 (Alaska 1977). However, the findings here are not statements of the factual basis or the legal authority for the legislation, but a legal conclusion that certain laws (not yet enacted) are unconstitutional under the United States Constitution. If a federal or state law is challenged, it will ultimately be a court that determines whether the laws at issue are unconstitutional. *Marbury v. Madison*, 5 U.S. 137, 177 - 78 (1803). Thus it is likely that a court, whether ruling on the constitutionality of the anticipated federal firearms legislation or this legislation, will make its own determination of the legal question rather than rely on the legislative findings. *Cf. State v. Enserch*, 787 P.2d 624 (Alaska 1989), in

Representative Mike Chenault
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which the Alaska Supreme Court noted legislative findings, but went on to find a law unconstitutional.

Retroactivity

Section 6 of the bill makes retroactive to January 1, 2013, the legislature's declaration in proposed AS 44.99.500(f) (sec. 5 of the bill) that certain actions are unconstitutional. Retroactivity is generally disfavored. *Watts v. Seward School Board*, 421 P.2d 586, 603 (Alaska 1966), *vacated on other grounds*, 391 U.S. 592, 88 S. Ct. 1753, 20 L.Ed.2d 842 (1968), *judgment reinstated*, 454 P.2d 732 (Alaska 1969). AS 01.10.090 requires that a statute that is intended to be retroactive must say so expressly, as proposed AS 44.99.500(f) does. However, retroactive laws that have the effect of imposing criminal penalties on conduct that precedes the enactment of the law are ex post facto laws that are forbidden by both the federal and state constitutions. U.S. Const. Art. I, sec. 9, cl. 3; Alaska Const. art. I, sec. 15. Thus proposed AS 44.99.500(g), also found in sec. 5 of the the committee substitute, if applied to conduct that occurred before the effective date of the act, would be unconstitutional. Accordingly, the provision of the bill imposing criminal penalties for the enforcement of federal law has been drafted so that it covers only post-enactment conduct.

Further, the recent formal actions of the President of the United States that are apparently of concern in this legislation, do not seem to create new law. *See attached* January 16, 2013, presidential memoranda published in the January 22, 2013, Federal Register. These memoranda provide direction to federal agencies, including direction to enforce existing law.¹ Thus it seems particularly important to limit any criminal penalties to post-enactment conduct, to avoid imposing penalties for ongoing enforcement of existing law that is not otherwise the subject of this legislation.

Please let me know if I can be of further assistance in this matter.

KJS:lnd
13-026.lnd

Enclosures

¹ The President's plan includes the topics in the memoranda, and suggestions for legislation that must be passed by Congress. The plan can be found here: http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf. For a summary of the proposals by category, here is a chart from an article in the *Washington Post*: <http://www.washingtonpost.com/wp-srv/special/politics/obama-gun-proposals/index.html>.

LEGAL SERVICES

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

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

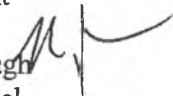
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 16, 2013

SUBJECT: Exempting Firearms from Federal Regulation
(Work Order No. 28-LS0290\A)

TO: Representative Mike Chenault
Attn: Tom Wright

FROM: Kathleen Strasbaugh 
Legislative Counsel

Please find enclosed the bill you requested exempting certain firearms and firearms accessories from federal regulation and providing a criminal penalty for federal officials who attempt to enforce such federal regulation. We note that the bill is largely unconstitutional.

Drafting Matters

The bill is in the form of amendments to AS 44.99.500, enacted in 2010. AS 44.99.500 was enacted in an effort to avoid federal regulation of firearms that are made in Alaska on the theory that the commerce clause could not be used to authorize federal firearms regulation for purely intrastate activity. Wyoming's new bill is also in the form of amendments to a nearly identical act. The amendments (1) add possession to the activities to be exempted from federal regulation, (2) provide criminal penalties at a misdemeanor level for enforcing or attempting to enforce federal regulation, and (3) attempt to prevent the application of not-yet-proposed federal laws regarding semiautomatic weapons and magazines.

You did not specify the level of misdemeanor that you wanted to apply to the newly created offense. The current draft makes the offense a class B misdemeanor, which allows imprisonment for not more than 90 days, and a fine of not more than \$2000. AS 12.55.135(b); AS 12.55.035(b)(6). The other available class of misdemeanor is class A, which carries a penalty of not more than one year's imprisonment, and a fine of not more than \$10,000. AS 12.55.135(a); AS 12.55.035(b)(5). Please let me know if you would prefer that the offense be classified as a class A misdemeanor.

Constitutional Failings

Challenges to federal firearm regulation are generally undertaken for a determination of whether a regulation is an appropriate subject for federal legislation under the Commerce

Clause. This issue was discussed in some detail in hearings conducted at the time the legislature was considering passage of AS 44.99.500. *See Minutes*, H. Jud. Comm. (HB 186, April 6, 2009); *Minutes*, S. Jud. Comm. (HB 186, February 1, 2010); *Minutes*, S. Jud. Comm. (HB 186, February 17, 2010).¹

We summarize the discussion briefly here.

Article I, § 8 of the Constitution of the United States provides:

The Congress shall have power . . . [t]o regulate commerce with foreign nations, and among the several states and with the Indian tribes

In *United States v. Lopez*, 514 U.S. 549 (1995), the United States Supreme Court found that a federal law prohibiting the possession of a firearm near a school was not an economic activity:

[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

514 U.S. at 561. Accordingly, the Court struck down 18 U.S.C. § 922(q), the "Gun Free School Zones Act of 1990," holding that the commerce clause did not provide support for the legislation.

However, *Lopez* is not likely to save the bill, or AS 44.99.500. In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Court held that the commerce clause authorized Congress to enact federal laws regulating and criminalizing activities involving controlled substances even if those activities were wholly intrastate and were pursuant to a state statutory scheme that authorized the activities. The court found that unlike the activity at issue in *Lopez*, the activities regulated by the federal controlled substances laws are fundamentally economic. The CSA regulates the production, distribution, and consumption of commodities for which there is an established, interstate market. Prohibiting intrastate possession of an article of commerce is a commonly utilized means of regulating commerce in that product. Limiting the activity to marijuana possession and cultivation "in accordance with state law" could not serve to place those activities outside of Congress's reach. 545 U.S. at 25-26.

Once Congress properly adopts legislation under the commerce clause, the supremacy clause resolves any conflict between federal and state law in favor of federal law. *Id.*

¹ See also, documents linked at http://www.legis.state.ak.us/basis/get_minutes.asp?chamb=B&date1=010109&date2=011413&session=26&Root=HB186.

Representative Mike Chenault
January 16, 2013
Page 3

As Article VI, Clause 2 of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Ninth Circuit Court of Appeals upheld federal regulation of firearms produced solely within one state in *United States v. Stewart*, 451 F.3d 1071 (9th Cir. 2006). Robert Stewart manufactured homemade machine guns and machine gun kits wholly within California and was convicted of possessing a machine gun in violation of federal law. Stewart appealed and the Ninth Circuit Court of Appeals, based upon *Lopez* and another case, and before *Raich* was decided, initially reversed his conviction finding that the simple possession of homemade machines did not have a substantial effect on interstate commerce. See *United States v. Stewart*, 348 F.3d 1132 (9th Cir. 2003). After the United States Supreme Court decided *Raich*, the Supreme Court vacated the decision of the Ninth Circuit and told the court to reconsider their opinion in light of *Raich*. On remand, the Ninth Circuit found that Congress had the authority to regulate machine guns, including one's wholly a product of intrastate commerce. The court found that guns, can enter the interstate market and affect supply and demand.

The new amendments to the law compound the problems of AS 44.99.500, in that by adding possession and a potential federal ban on certain weapons and accessories to the exemptions in the law, items that may well be obtained in interstate commerce are affected. Further, attempting to prevent federal officers from enforcing federal law presents rather clear supremacy clause issues.

In light of the foregoing, it will be important as the bill proceeds that the public be notified that the law is unlikely to result in the suspension of federal enforcement.

Please let me know if I can be of any further assistance in this matter.

KJS:plm
13-007.plm

Enclosure

28-LS0290\R
Strasbaugh
3/15/13

SENATE CS FOR CS FOR HOUSE BILL NO. 69()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Millett, Johnson, Tammie Wilson, Hawker, Olson, Feige, Peggy Wilson, Thompson, Keller, Gattis, Lynn, Saddler, Higgins, LeDoux, Foster, Hughes, Stoltze, Reinbold, Tuck, Neuman, Isaacson

A BILL
FOR AN ACT ENTITLED

1 **"An Act prohibiting state and municipal agencies from using assets to implement or aid**
2 **in the implementation of the requirements of certain federal statutes, regulations, rules,**
3 **and orders that are applied to infringe on a person's right to bear arms or right to due**
4 **process or that implement or aid in the implementation of the federal REAL ID Act of**
5 **2005; exempting certain firearms, firearm accessories, and ammunition in this state**
6 **from federal regulation; declaring certain federal statutes, regulations, rules, and orders**
7 **unconstitutional under the Constitution of the United States and unenforceable in this**
8 **state; and providing for an effective date."**

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

12 **FINDINGS.** The legislature finds that

1 (1) a statute, regulation, rule, or order that has the purpose, intent, or effect of
2 confiscating any firearm, banning any firearm, limiting the size of a magazine for any firearm,
3 imposing any limit on the ammunition that may be purchased for any firearm, or requiring the
4 registration of any firearm or its ammunition infringes on an Alaskan's right to bear arms in
5 violation of the Second Amendment to the Constitution of the United States and, therefore, is
6 not made in accordance with the Constitution of the United States, is not authorized by the
7 Constitution of the United States, is not the supreme law of the land, and, consequently, is
8 invalid in this state and shall be considered null and void and of no effect in this state; and

9 (2) further authority for this Act is the following:

10 (A) art. I, sec. 19, Constitution of the State of Alaska, clearly secures
11 to Alaska citizens and prohibits government interference with the right of individual
12 Alaska citizens to keep and bear arms;

13 (B) the Tenth Amendment to the Constitution of the United States
14 guarantees to the states and their people all powers not granted to the federal
15 government elsewhere in the constitution and reserves to the state and people of
16 Alaska certain powers as they were intended at the time that Alaska was admitted to
17 statehood in 1959; the guaranty of those powers is a matter of contract between the
18 state and people of Alaska and the United States as of the time that the compact with
19 the United States was agreed to and adopted by Alaska and the United States in 1959;

20 (C) the Ninth Amendment to the Constitution of the United States
21 guarantees to the people rights not granted in the constitution and reserves to the
22 people of Alaska certain rights as they were intended at the time that Alaska was
23 admitted to statehood in 1959; the guaranty of those rights is a matter of contract
24 between the state and people of Alaska and the United States as of the time that the
25 compact with the United States was agreed upon and adopted by Alaska and the
26 United States in 1959;

27 (D) art. I, sec. 7, Constitution of the State of Alaska, and the Fifth
28 Amendment to the Constitution of the United States guarantee to the people the right
29 to due process.

30 * **Sec. 2.** AS 44.99.040 is repealed and reenacted to read:

31 **Sec. 44.99.040. Limitation on use of assets.** (a) A state or municipal agency

1 may not use or authorize the use of an asset to implement or aid in the implementation
2 of a requirement of

3 (1) an order of the President of the United States, a federal regulation,
4 or a law enacted by the United States Congress that is applied to

5 (A) infringe on a person's right, under the Second Amendment
6 to the Constitution of the United States, to keep and bear arms;

7 (B) deny a person a right to due process, or a protection of due
8 process, that would otherwise be available to the person under the Constitution
9 of the State of Alaska, or the Constitution of the United States; or

10 (2) P.L. 109-13, Division B (REAL ID Act of 2005).

11 (b) In this section,

12 (1) "asset" means funds, facilities, equipment, services, or other
13 resources of a state or municipal agency;

14 (2) "state or municipal agency" means the University of Alaska, the
15 Alaska Aerospace Corporation, the Alaska Housing Finance Corporation, the Alaska
16 Industrial Development and Export Authority, the Alaska Energy Authority, the
17 Alaska Railroad Corporation, or a department, institution, board, commission,
18 division, council, committee, authority, public corporation, school district, regional
19 educational attendance area, or other administrative unit of a municipality or of the
20 executive, judicial, or legislative branch of state government, and includes employees
21 of those entities.

22 * **Sec. 3.** AS 44.99.500(a) is amended to read:

23 (a) A personal firearm, a firearm accessory, or ammunition that is **possessed**
24 **in this state or** manufactured commercially or privately in this state and that remains
25 in the state is not subject to federal law or federal regulation, including registration,
26 under the authority of the United States Congress to regulate interstate commerce as
27 those items have not traveled in interstate commerce.

28 * **Sec. 4.** AS 44.99.500(b) is amended to read:

29 (b) This section applies to a firearm, a firearm accessory, or ammunition that
30 is **possessed in this state or** manufactured in this state from basic materials and that
31 can be manufactured without the inclusion of any significant parts imported from

1 another state. Generic and insignificant parts that have other manufacturing or
2 consumer product applications are not firearms, firearm accessories, or ammunition,
3 and their importation into this state and incorporation into a firearm, a firearm
4 accessory, or ammunition manufactured in this state does not subject the firearm,
5 firearm accessory, or ammunition to federal regulation. Basic materials, such as
6 unmachined steel and unshaped wood, are not firearms, firearm accessories, or
7 ammunition and are not subject to congressional authority to regulate firearms, firearm
8 accessories, and ammunition under interstate commerce as if they were actually
9 firearms, firearm accessories, or ammunition. The authority of the United States
10 Congress to regulate interstate commerce in basic materials does not include authority
11 to regulate firearms, firearm accessories, and ammunition **possessed in this state or**
12 **made in this state** from those materials. Firearm accessories that are imported into this
13 state from another state and that are subject to federal regulation as being in interstate
14 commerce do not subject a firearm to federal regulation under interstate commerce
15 because they are attached to or used in conjunction with a firearm in this state.

16 * **Sec. 5.** AS 44.99.500(d) is amended to read:

17 (d) The attorney general may defend a citizen of this state who is prosecuted
18 by the government of the United States under the congressional power to regulate
19 interstate commerce for violation of a federal law concerning the manufacture, sale,
20 transfer, or possession of a firearm, a firearm accessory, or ammunition **possessed in**
21 **this state or** manufactured and retained within this state.

22 * **Sec. 6.** AS 44.99.500 is amended by adding new subsections to read:

23 (f) A federal statute, regulation, rule, or order adopted, enacted, or otherwise
24 effective on or after the effective date of this Act is unenforceable in this state by an
25 official, agent, or employee of this state, a municipality, or the federal government if
26 the federal statute, regulation, rule, or order attempts to

27 (1) ban or restrict ownership of a semiautomatic firearm or a magazine
28 of a firearm; or

29 (2) require a firearm, magazine, or other firearm accessory to be
30 registered.

31 (g) the attorney general may, under the Second Amendment to the

1 Constitution of the United States or art. I, sec. 19, Constitution of the State of Alaska,
2 use all state resources necessary to prevent the implementation of a federal statute,
3 regulation, rule, or order that violates the rights of a resident of the state.

4 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

28-LS0290\Y
Strasbaugh
3/14/13

SENATE CS FOR CS FOR HOUSE BILL NO. 69()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Millett, Johnson, Tammie Wilson, Hawker, Olson, Feige, Peggy Wilson, Thompson, Keller, Gattis, Lynn, Saddler, Higgins, LeDoux, Foster, Hughes, Stoltze, Reinbold, Tuck, Neuman, Isaacson

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting state and municipal agencies from using assets to implement or aid**
2 **in the implementation of the requirements of certain federal statutes, regulations, rules,**
3 **and orders that are applied to infringe on a person's right to bear arms or right to due**
4 **process or that implement or aid in the implementation of the federal REAL ID Act of**
5 **2005 or the National Defense Authorization Act for Fiscal Year 2012; exempting certain**
6 **firearms, firearm accessories, and ammunition in this state from federal regulation;**
7 **declaring certain federal statutes, regulations, rules, and orders unconstitutional under**
8 **the Constitution of the United States and unenforceable in this state; and providing for**
9 **an effective date."**

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

1 FINDINGS. The legislature finds that

2 (1) a statute, regulation, rule, or order that has the purpose, intent, or effect of
3 confiscating any firearm, banning any firearm, limiting the size of a magazine for any firearm,
4 imposing any limit on the ammunition that may be purchased for any firearm, or requiring the
5 registration of any firearm or its ammunition infringes on an Alaskan's right to bear arms in
6 violation of the Second Amendment to the Constitution of the United States and, therefore, is
7 not made in accordance with the Constitution of the United States, is not authorized by the
8 Constitution of the United States, is not the supreme law of the land, and, consequently, is
9 invalid in this state and shall be considered null and void and of no effect in this state; and

10 (2) further authority for this Act is the following:

11 (A) art. I, sec. 19, Constitution of the State of Alaska, clearly secures
12 to Alaska citizens and prohibits government interference with the right of individual
13 Alaska citizens to keep and bear arms;

14 (B) the Tenth Amendment to the Constitution of the United States
15 guarantees to the states and their people all powers not granted to the federal
16 government elsewhere in the constitution and reserves to the state and people of
17 Alaska certain powers as they were intended at the time that Alaska was admitted to
18 statehood in 1959; the guaranty of those powers is a matter of contract between the
19 state and people of Alaska and the United States as of the time that the compact with
20 the United States was agreed to and adopted by Alaska and the United States in 1959;

21 (C) the Ninth Amendment to the Constitution of the United States
22 guarantees to the people rights not granted in the constitution and reserves to the
23 people of Alaska certain rights as they were intended at the time that Alaska was
24 admitted to statehood in 1959; the guaranty of those rights is a matter of contract
25 between the state and people of Alaska and the United States as of the time that the
26 compact with the United States was agreed upon and adopted by Alaska and the
27 United States in 1959;

28 (D) art. I, sec. 7, Constitution of the State of Alaska, and the Fifth
29 Amendment to the Constitution of the United States guarantee to the people the right
30 to due process.

31 * **Sec. 2.** AS 44.99.040 is repealed and reenacted to read:

1 **Sec. 44.99.040. Limitation on use of assets.** (a) A state or municipal agency
2 may not use or authorize the use of an asset to implement or aid in the implementation
3 of a requirement of

4 (1) an order of the President of the United States, a federal regulation,
5 or a law enacted by the United States Congress that is applied to

6 (A) infringe on a person's right, under the Second Amendment
7 to the Constitution of the United States, to keep and bear arms;

8 (B) deny a person a right to due process, or a protection of due
9 process, that would otherwise be available to the person under the Constitution
10 of the State of Alaska, or the Constitution of the United States;

11 (2) P.L. 109-13, Division B (REAL ID Act of 2005); or

12 (3) secs. 1021 and 1022, P.L. 112-81 (National Defense Authorization
13 Act for Fiscal Year 2012).

14 (b) In this section,

15 (1) "state or municipal agency" means the University of Alaska, the
16 Alaska Aerospace Corporation, the Alaska Housing Finance Corporation, the Alaska
17 Industrial Development and Export Authority, the Alaska Energy Authority, the
18 Alaska Railroad Corporation, or a department, institution, board, commission,
19 division, council, committee, authority, public corporation, school district, regional
20 educational attendance area, or other administrative unit of a municipality or of the
21 executive, judicial, or legislative branch of state government, and includes employees
22 of those entities;

23 (2) "asset" means funds, facilities, equipment, services, or other
24 resources of a state or municipal agency.

25 * **Sec. 3.** AS 44.99.500(a) is amended to read:

26 (a) A personal firearm, a firearm accessory, or ammunition that is possessed
27 in this state or manufactured commercially or privately in this state and that remains
28 in the state is not subject to federal law or federal regulation, including registration,
29 under the authority of the United States Congress to regulate interstate commerce as
30 those items have not traveled in interstate commerce.

31 * **Sec. 4.** AS 44.99.500(b) is amended to read:

1 (b) This section applies to a firearm, a firearm accessory, or ammunition that
2 is possessed in this state or manufactured in this state from basic materials and that
3 can be manufactured without the inclusion of any significant parts imported from
4 another state. Generic and insignificant parts that have other manufacturing or
5 consumer product applications are not firearms, firearm accessories, or ammunition,
6 and their importation into this state and incorporation into a firearm, a firearm
7 accessory, or ammunition manufactured in this state does not subject the firearm,
8 firearm accessory, or ammunition to federal regulation. Basic materials, such as
9 unmachined steel and unshaped wood, are not firearms, firearm accessories, or
10 ammunition and are not subject to congressional authority to regulate firearms, firearm
11 accessories, and ammunition under interstate commerce as if they were actually
12 firearms, firearm accessories, or ammunition. The authority of the United States
13 Congress to regulate interstate commerce in basic materials does not include authority
14 to regulate firearms, firearm accessories, and ammunition possessed in this state or
15 made in this state from those materials. Firearm accessories that are imported into this
16 state from another state and that are subject to federal regulation as being in interstate
17 commerce do not subject a firearm to federal regulation under interstate commerce
18 because they are attached to or used in conjunction with a firearm in this state.

19 * **Sec. 5.** AS 44.99.500(d) is amended to read:

20 (d) The attorney general may defend a citizen of this state who is prosecuted
21 by the government of the United States under the congressional power to regulate
22 interstate commerce for violation of a federal law concerning the manufacture, sale,
23 transfer, or possession of a firearm, a firearm accessory, or ammunition possessed in
24 this state or manufactured and retained within this state.

25 * **Sec. 6.** AS 44.99.500 is amended by adding new subsections to read:

26 (f) A federal statute, regulation, rule, or order adopted, enacted, or otherwise
27 effective on or after the effective date of this Act is unenforceable in this state by an
28 official, agent, or employee of this state, a municipality, or the federal government if
29 the federal statute, regulation, rule, or order attempts to

30 (1) ban or restrict ownership of a semiautomatic firearm or a magazine
31 of a firearm; or

1 (2) require a firearm, magazine, or other firearm accessory to be
2 registered.

3 (g) the attorney general may, under the Second Amendment to the
4 Constitution of the United States or art. I, sec. 19 of the Constitution of the State of
5 Alaska, use all state resources necessary to prevent the implementation of a federal
6 statute, regulation, rule, or order that violates the rights of a resident of the state.

7 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Senate Majority Leader

Judiciary Committee
Chairman
In-State Energy Committee
Co-Chair
State Affairs Committee
Joint Armed Services Committee
Legislative Council
Rules Committee



Senator John Coghill

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SCSCSHB 69(JUD)

Sectional

Sec. 1. (1) Nullification clause for statutes, regulations and rules confiscating, banning, or limiting firearms or requiring registration of firearms.

(2) Assigning authority for HB 69 to the Article 1, Sections VII (due process) and 19 (keep & bear arms) of the Alaska State Constitution, [and the FIFTH (due process), NINTH (unenumerated rights), and TENTH (states rights) Amendments of the United States Constitution.

Sec. 2. Prohibits use of state or municipal assets to implement or aid in the implementation of federal actions that are unconstitutional.

Defines "asset" and "state or municipal agency".

Sec. 3. Excludes guns possessed in Alaska from federal regulation under the interstate commerce clause.

Sec. 4. Exempts gun materials that are obtained outside of the state that are not firearms until manufactured from interstate commerce regulation.

Sec. 5. Allows the Attorney General to defend an Alaskan being prosecuted by federal authorities for rights identified in the bill. _____

Sec. 6. Declares restrictive federal firearms laws unenforceable.

Allows for the Attorney General to use state resources to challenge unconstitutional federal laws that violate the right to keep and bear arms.

Sec. 7. Immediate effective date.

Alaska State Legislature

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Juneau, Alaska 99801-1182
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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

SPONSOR STATEMENT

COMMITTEE SUBSTITUTE for HOUSE BILL 69 (JUD): *“An Act exempting certain firearms and firearm accessories in the state from federal regulation; providing criminal penalties for federal officials who enforce or attempt to enforce a federal law, rule or order regulating certain firearms and firearm accessories in the state; and providing for an effective date.”*

The intent of CSHB 69(JUD) is an effort to protect Alaskans’ rights to keep and bear arms protected by both the U.S. and Alaska Constitutions. In light of the President’s executive orders and legislative proposals, it is important that Alaska protect not only our Second Amendment rights but also asserting citizens’ and states’ rights guaranteed under the Ninth and Tenth Amendment.

The legislation was drafted in anticipation of President Obama’s executive orders based on recommendations of a work group led by Vice President Biden. This group was charged with developing a set of concrete policy proposals for reducing gun violence. These proposals were the basis for the Presidential Executive Memoranda that were announced on January 16, 2013. The plan combines executive actions and calls for legislative action that “would help keep guns out of the wrong hands, ban assault and high-capacity magazines, make our schools safer, and increase access to mental health services.” Although the executive memorandum does not carry the force of law, the recommendations calling for Congressional action could affect Second Amendment rights and the rights of states as well.

Committee Substitute for House Bill 69 (JUD) amends current statute (House Bill 186) passed by the Legislature in 2010.

THE WHITE HOUSE
Office of the Press Secretary

EMBARGOED UNTIL THE START OF THE PRESIDENT'S REMARKS
January 16, 2013

Gun Violence Reduction Executive Actions

Today, the President is announcing that he and the Administration will:

1. Issue a Presidential Memorandum to require federal agencies to make relevant data available to the federal background check system.
2. Address unnecessary legal barriers, particularly relating to the Health Insurance Portability and Accountability Act, that may prevent states from making information available to the background check system.
3. Improve incentives for states to share information with the background check system.
4. Direct the Attorney General to review categories of individuals prohibited from having a gun to make sure dangerous people are not slipping through the cracks.
5. Propose rulemaking to give law enforcement the ability to run a full background check on an individual before returning a seized gun.
6. Publish a letter from ATF to federally licensed gun dealers providing guidance on how to run background checks for private sellers.
7. Launch a national safe and responsible gun ownership campaign.
8. Review safety standards for gun locks and gun safes (Consumer Product Safety Commission).
9. Issue a Presidential Memorandum to require federal law enforcement to trace guns recovered in criminal investigations.
10. Release a DOJ report analyzing information on lost and stolen guns and make it widely available to law enforcement.
11. Nominate an ATF director.
12. Provide law enforcement, first responders, and school officials with proper training for active shooter situations.
13. Maximize enforcement efforts to prevent gun violence and prosecute gun crime.
14. Issue a Presidential Memorandum directing the Centers for Disease Control to research the causes and prevention of gun violence.
15. Direct the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies.
16. Clarify that the Affordable Care Act does not prohibit doctors asking their patients about guns in their homes.
17. Release a letter to health care providers clarifying that no federal law prohibits them from reporting threats of violence to law enforcement authorities.
18. Provide incentives for schools to hire school resource officers.

EMBARGOED

19. Develop model emergency response plans for schools, houses of worship and institutions of higher education.
20. Release a letter to state health officials clarifying the scope of mental health services that Medicaid plans must cover.
21. Finalize regulations clarifying essential health benefits and parity requirements within ACA exchanges.
22. Commit to finalizing mental health parity regulations.
23. Launch a national dialogue led by Secretaries Sebelius and Duncan on mental health.



Presidential Documents

Memorandum of January 16, 2013

Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System

Memorandum for the Heads of Executive Departments and Agencies

Since it became operational in 1998, the National Instant Criminal Background Check System (NICS) has been an essential tool in the effort to ensure that individuals who are prohibited under Federal or State law from possessing firearms do not acquire them from Federal Firearms Licensees (FFLs). The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by Federal, State, and tribal authorities.

The NICS Improvement Amendments Act of 2007 (NIAA) (Public Law 1107-180) was a bipartisan effort to strengthen the NICS by increasing the quantity and quality of relevant records from Federal, State, and tribal authorities accessible by the system. Among its requirements, the NIAA mandated that executive departments and agencies (agencies) provide relevant information, including criminal history records, certain adjudications related to the mental health of a person, and other information, to databases accessible by the NICS. Much progress has been made to identify information generated by agencies that is relevant to determining whether a person is prohibited from receiving or possessing firearms, but more must be done. Greater participation by agencies in identifying records they possess that are relevant to determining whether an individual is prohibited from possessing a firearm and a regularized process for submitting those records to the NICS will strengthen the accuracy and efficiency of the NICS, increasing public safety by keeping guns out of the hands of persons who cannot lawfully possess them.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Improving the Availability of Records to the NICS.* (a) Within 45 days of the date of this memorandum, and consistent with the process described in section 3 of this memorandum, the Department of Justice (DOJ) shall issue guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS.

(b) Within 60 days of issuance of guidance pursuant to subsection (a) of this section, agencies shall submit a report to DOJ advising whether they possess relevant records, as set forth in the guidance, and setting forth an implementation plan for making information in those records available to the NICS, consistent with applicable law.

(c) In accordance with the authority and responsibility provided to the Attorney General by the Brady Handgun Violence Prevention Act (Public Law 103-159), as amended, the Attorney General, consistent with the process described in section 3 of this memorandum, shall resolve any disputes concerning whether agency records are relevant and should be made available to the NICS.

(d) To the extent they possess relevant records, as set forth in the guidance issued pursuant to subsection (a) of this section, agencies shall prioritize making those records available to the NICS on a regular and ongoing basis.

Sec. 2. *Measuring Progress.* (a) By October 1, 2013, and annually thereafter, agencies that possess relevant records shall submit a report to the President through the Attorney General describing:

- (i) the relevant records possessed by the agency that can be shared with the NICS consistent with applicable law;
- (ii) the number of those records submitted to databases accessible by the NICS during each reporting period;
- (iii) the efforts made to increase the percentage of relevant records possessed by the agency that are submitted to databases accessible by the NICS;
- (iv) any obstacles to increasing the percentage of records that are submitted to databases accessible by the NICS;
- (v) for agencies that make qualifying adjudications related to the mental health of a person, the measures put in place to provide notice and programs for relief from disabilities as required under the NIAA;
- (vi) the measures put in place to correct, modify, or remove records accessible by the NICS when the basis under which the record was made available no longer applies; and
- (vii) additional steps that will be taken within 1 year of the report to improve the processes by which records are identified, made accessible, and corrected, modified, or removed.

(b) If an agency certifies in its annual report that it has made available to the NICS its relevant records that can be shared consistent with applicable law, and describes its plan to make new records available to the NICS and to update, modify, or remove existing records electronically no less often than quarterly as required by the NIAA, such agency will not be required to submit further annual reports. Instead, the agency will be required to submit an annual certification to DOJ, attesting that the agency continues to submit relevant records and has corrected, modified, or removed appropriate records.

Sec. 3. *NICS Consultation and Coordination Working Group.* To ensure adequate agency input in the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS, there is established a NICS Consultation and Coordination Working Group (Working Group), to be chaired by the Attorney General or his designee.

(a) *Membership.* In addition to the Chair, the Working Group shall consist of representatives of the following agencies:

- (i) the Department of Defense;
- (ii) the Department of Health and Human Services;
- (iii) the Department of Transportation;
- (iv) the Department of Veterans Affairs;
- (v) the Department of Homeland Security;
- (vi) the Social Security Administration;
- (vii) the Office of Personnel Management;
- (viii) the Office of Management and Budget; and
- (ix) such other agencies or offices as the Chair may designate.

(b) *Functions.* The Working Group shall convene regularly and as needed to allow for consultation and coordination between DOJ and agencies affected by the Attorney General's implementation of the NIAA, including with respect to the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS. The Working Group may also consider, as appropriate:

- (i) developing means and methods for identifying agency records deemed relevant by DOJ's guidance;
 - (ii) addressing obstacles faced by agencies in making their relevant records available to the NICS;
 - (iii) implementing notice and relief from disabilities programs; and
 - (iv) ensuring means to correct, modify, or remove records when the basis under which the record was made available no longer applies.
- (c) *Reporting.* The Working Group will review the annual reports required by section 2(a) of this memorandum, and member agencies may append to the reports any material they deem appropriate, including an identification of any agency best practices that may be of assistance to States in supplying records to the NICS.

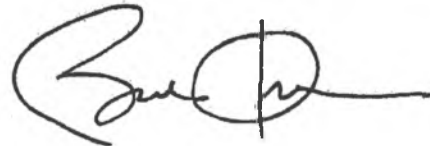
Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to a department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

Sec. 5. Publication. The Attorney General is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 16, 2013

Presidential Documents

Memorandum of January 16, 2013

Engaging in Public Health Research on the Causes and Prevention of Gun Violence

Memorandum for the Secretary of Health and Human Services

In addition to being a law enforcement challenge, gun violence is also a serious public health issue that affects thousands of individuals, families, and communities across the Nation. Each year in the United States there are approximately 30,000 firearm-related deaths, and approximately 11,000 of those deaths result from homicides. Addressing this critical issue requires a comprehensive, multifaceted approach.

Recent research suggests that, in developing such an approach, a broader public health perspective is imperative. Significant strides can be made by assessing the causes of gun violence and the successful efforts in place for preventing the misuse of firearms. Taking these steps will improve our understanding of the gun violence epidemic and will aid in the continued development of gun violence prevention strategies.

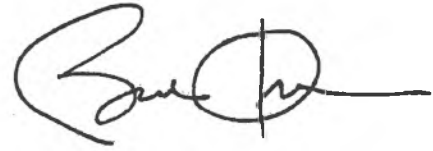
Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Research. The Secretary of Health and Human Services (Secretary), through the Director of the Centers for Disease Control and Prevention and other scientific agencies within the Department of Health and Human Services, shall conduct or sponsor research into the causes of gun violence and the ways to prevent it. The Secretary shall begin by identifying the most pressing research questions with the greatest potential public health impact, and by assessing existing public health interventions being implemented across the Nation to prevent gun violence.

Sec. 2. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 3. *Publication.* You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

THE WHITE HOUSE,
Washington, January 16, 2013

[FR Doc. 2013-01272
Filed 1-18-13; 8:45 am]
Billing code 4150-42

Presidential Documents

Memorandum of January 16, 2013

Tracing of Firearms in Connection With Criminal Investigations

Memorandum for the Heads of Executive Departments and Agencies

Reducing violent crime, and gun-related crime in particular, is a top priority of my Administration. A key component of this effort is ensuring that law enforcement agencies at all levels—Federal, State, and local—utilize those tools that have proven most effective. One such tool is firearms tracing, which significantly assists law enforcement in reconstructing the transfer and movement of seized or recovered firearms. Responsibility for conducting firearms tracing rests with the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Over the years, firearms tracing has significantly assisted law enforcement in solving violent crimes and generating thousands of leads that may otherwise not have been available.

Firearms tracing provides two principal benefits. First, tracing is an important investigative tool in individual cases, providing law enforcement agents with critical information that may lead to the apprehension of suspects, the recovery of other guns used in the commission of crimes, and the identification of potential witnesses, among other things. Second, analysis of tracing data in the aggregate provides valuable intelligence about local, regional, and national patterns relating to the movement and sources of guns used in the commission of crimes, which is useful for the effective deployment of law enforcement resources and development of enforcement strategies. Firearms tracing is a particularly valuable tool in detecting and investigating firearms trafficking, and has been deployed to help combat the pernicious problem of firearms trafficking across the Southwest border.

The effectiveness of firearms tracing as a law enforcement intelligence tool depends on the quantity and quality of information and trace requests submitted to ATF. In fiscal year 2012, ATF processed approximately 345,000 crime-gun trace requests for thousands of domestic and international law enforcement agencies. The Federal Government can encourage State and local law enforcement agencies to take advantage of the benefits of tracing all recovered firearms, but Federal law enforcement agencies should have an obligation to do so. If Federal law enforcement agencies do not conscientiously trace every firearm taken into custody, they may not only be depriving themselves of critical information in specific cases, but may also be depriving all Federal, State, and local agencies of the value of complete information for aggregate analyses.

Maximizing the effectiveness of firearms tracing, and the corresponding impact on combating violent crimes involving firearms, requires that Federal law enforcement agencies trace all recovered firearms taken into Federal custody in a timely and efficient manner.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Firearms Tracing. (a) Federal law enforcement agencies shall ensure that all firearms recovered after the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF at the earliest time practicable. Federal law enforcement agencies, as well as other executive departments and agencies, are encouraged, to the extent practicable, to take steps to ensure that firearms recovered

prior to the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF.

(b) Within 30 days of the date of this memorandum, ATF will issue guidance to Federal law enforcement agencies on submitting firearms trace requests.

(c) Within 60 days of the date of this memorandum, Federal law enforcement agencies shall ensure that their operational protocols reflect the requirement to trace recovered firearms through ATF.

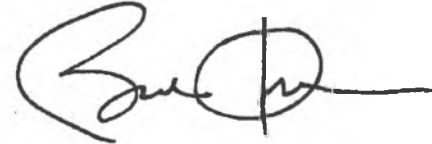
(d) Within 90 days of the date of this memorandum, each Federal law enforcement agency shall submit a report to the Attorney General affirming that its operational protocols reflect the requirements set forth in this memorandum.

(e) For purposes of this memorandum, "Federal law enforcement agencies" means the Departments of State, the Treasury, Defense, Justice, the Interior, Agriculture, Energy, Veterans Affairs, and Homeland Security, and such other agencies and offices that regularly recover firearms in the course of their criminal investigations as the President may designate.

Sec. 2. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof.

(b) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 3. Publication. The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 16, 2013

Printz v. United States

From Wikipedia, the free encyclopedia

Mack and Printz v. United States, 521 U.S. 898 (1997),^[1] was a United States Supreme Court ruling that established the unconstitutionality of certain interim provisions of the Brady Handgun Violence Prevention Act.

Contents

- 1 Background
 - 1.1 The Gun Control Act of 1968
 - 1.2 The Cameron Act
 - 1.3 Interim provisions
 - 1.4 The plaintiffs
 - 1.5 Higher court decisions
- 2 Majority decision
 - 2.1 Historical understanding and practice
 - 2.2 The structure of the Constitution
- 3 The dissent
- 4 Effects of the decision
- 5 See also
- 6 References
- 7 External sources

Background

The Gun Control Act of 1968

The Gun Control Act of 1968 (GCA), Pub. L. 90-618 and subsequent amendments established a detailed Federal scheme governing the distribution of firearms. The GCA prohibited firearms ownership by certain broad categories of individuals thought to pose a threat to public safety: convicted felons, convicted misdemeanor domestic violence or stalking offenders, persons with an outstanding felony warrant, fugitives from justice, unlawful aliens, persons with court-ordered protective orders issued against them, persons who have been involuntarily committed to a mental health facility, adjudicated mentally ill by a court, and others.

Persons disqualified from firearms ownership for mental health reasons can apply to have this disability removed. States that do not maintain an application process to allow persons disqualified for mental health reasons to obtain relief from firearms prohibition face Justice Assistance Grant penalties. Section 105 of the NICS Improvement Amendments Act of 2007

(<http://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-38245.html>) (NIAA), cited as Pub. L. 110-180, § 105, provides for restoration of firearm ownership rights in mental health cases. Under NIAA it is up to each U.S. state to come up with its own application process; thus the procedure to regain one's rights vary from state-to-state.

Mack and Printz v. United States



Supreme Court of the United States

Argued December 3, 1996

Decided June 27, 1997

Full case name *Jay Printz, Sheriff/Coroner, Eden Prairie, Minnesota, Petitioner 95-1478 v. United States; Richard Mack, Petitioner 95-1503 v. United States*

Citations 521 U.S. 898 (<https://supreme.justia.com/us/521/898/case.html>) (*more*)
117 S. Ct. 2365; 138 L. Ed. 2d 914; 1997 U.S. LEXIS 4044; 97 Cal. Daily Op. Service 5096; 97 Daily Journal DAR 8213; 11 Fla. L. Weekly Fed. S 224

Prior history On writs of cert. to the U.S. Court of Appeals for the Ninth Circuit

Holding

The Brady Handgun Violence Prevention Act's interim provision commanding the "chief law enforcement officer" (CLEO) of each local jurisdiction to conduct background checks, §922(s)(2), is unconstitutional.

Court membership

Chief Justice

William Rehnquist

Associate Justices

John P. Stevens · Sandra Day O'Connor
Antonin Scalia · Anthony Kennedy
David Souter · Clarence Thomas
Ruth Bader Ginsburg · Stephen Breyer

Case opinions

Majority Scalia, joined by Rehnquist, O'Connor, Kennedy, Thomas

Concurrence O'Connor

Concurrence Thomas

Dissent Stevens, joined by Souter, Ginsburg, Breyer

Dissent Souter

Dissent Breyer, joined by Stevens

Laws applied

U.S. Const. amend. X; Brady Handgun Violence Prevention Act, Pub. L. 103-159, 107 Stat. 1536

The Cameron Act

In 1993, Congress amended the 1968 Gun Control Act by enacting the Brady Handgun Violence Prevention Act, Pub. L. 103-159. This 1993 Act required the Attorney General to establish an electronic or phone-based background check to prevent firearms sales to persons already prohibited from owning firearms. This check, entitled the National Instant Criminal Background Check System (NICS) went into effect as required on November 30, 1998.

Interim provisions

The Act also immediately put in place certain interim provisions until that system became operative. Under the interim provisions, a firearms dealer who proposes to transfer a handgun must receive from the transferee a statement (the Brady Form), containing the name, address and date of the proposed transferee along with a sworn statement that the transferee is not among any of the classes of prohibited purchasers, verify the identity of the transferee by examining an identification document, and provide the "chief law enforcement officer" (CLEO) of the transferee's residence with notice of the contents (and a copy) of the Brady Form.

When a CLEO receives the required notice of a proposed transfer, they must "make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General."

The plaintiffs

Petitioners Jay Printz and Richard Mack, the Chief Law Enforcement Officers for Ravalli County, Montana, and Graham County, Arizona, represented by Stephen P. Halbrook and David T. Hardy respectively, filed separate actions challenging the constitutionality of the Brady Act's interim provisions. They objected to the use of congressional action to compel state officers to execute Federal law.

Higher court decisions

In each case, the District Court held that the provision requiring CLEOs to perform background checks was unconstitutional, but concluded that provision was severable from the remainder of the Act, effectively leaving a voluntary background check system in place. A divided panel of the Court of Appeals for the Ninth Circuit reversed, finding none of the Brady Act's interim provisions to be unconstitutional.

Majority decision

The majority of five justices ruled that the interim provisions of the Brady Bill are unconstitutional. In his opinion, Justice Scalia states that, although there is no constitutional text precisely responding to the challenge, an answer can be found "in historical understanding and practice, the structure of the Constitution, and in the jurisprudence of this Court."

Historical understanding and practice

Scalia concedes that legislation compelling judges to carry out federal legislation has been passed but considers that the nature of the courts, which occupy a vertical hierarchy that requires consideration of prior decisions by federal or state courts, exempts this from applying in this case. Furthermore, contrasting the frequency of legislation applying to judicial courts to the absence of legislation applying to state executives to show this power was not granted.

The structure of the Constitution

Scalia refers to the "dual sovereignty" established by the U.S. Constitution that federalism is built upon. His opinion states that the Framers designed the Constitution to allow Federal regulation of international and interstate matters, not internal matters reserved to the State Legislatures. The majority arrives at the conclusion that allowing the Federal government to draft the police officers of the 50 states into its service would increase its powers far beyond what the Constitution intends.

The Court also offered an alternative basis for striking down the provision: it violated the constitutional separation of powers by robbing the president of his power to execute the laws; that is, it contradicted the "unitary executive theory". The Court explained

We have thus far discussed the effect that federal control of state officers would have upon the first element of the "double security" alluded to by Madison: the division of power between State and Federal Governments. It would also have an effect upon the second element: the separation and equilibration of powers between the three branches of the Federal Government itself. The Constitution does not leave to speculation who is to administer the laws enacted by Congress; the President, it says, "shall take Care that the Laws be faithfully executed," Art. II, §3, personally and through officers whom he appoints (save for such inferior officers as Congress may authorize to be appointed by the "Courts of Law" or by "the Heads of Departments" who with other presidential appointees), Art. II, §2. The Brady Act effectively transfers this responsibility to thousands of CLEOs in the 50 States, who are left to implement the program without meaningful Presidential control (if indeed meaningful Presidential control is possible without the power to appoint and remove). The insistence of the Framers upon unity in the Federal Executive—to insure both vigor and accountability—is well known. See *The Federalist* No. 70 (A. Hamilton); 2 *Documentary History of the Ratification of the Constitution* 495 (M. Jensen ed. 1976) (statement of James Wilson); see also Calabresi & Prakash, *The President's Power to Execute the Laws*, 104 *Yale L. J.* 541 (1994). That unity would be shattered, and the power of the President would be subject to reduction, if Congress could act as effectively without the President as with him, by simply requiring state officers to execute its laws.

Finally, the majority cited previous rulings by the Supreme Court in similar situations. In *New York v. United States*, the Court invalidated a provision in a bill that "coerced" states to comply with a federal radioactive waste-disposal regime, holding "[t]he Federal Government may not compel the States to enact or administer a federal regulatory program". *New York v. United States*, 505 U.S. 144, 188 (1992).

The dissent

In his dissent, Justice Stevens suggests the Commerce clause of the Constitution, giving the Federal government the right to regulate handgun sales, can be coupled with the Necessary and Proper Clause, giving Congress the power to pass whatever laws are necessary and proper to carry out its previously enumerated power. Federal direction of state officials in this manner is analogous to ordering the mass inoculation of children to forestall an epidemic, or directing state officials to respond to a terrorist threat. He is very concerned with the ability of the federal government to respond to a national emergency and does not believe that "there is anything in the 10th amendment 'in historical understanding and practice, in the structure of the Constitution, or in the jurisprudence of this Court,' that forbids the enlistment of state officers to make that response effective." Moreover, the text of the Constitution does not support the Majority's apparent proposition that "a local police officer can ignore a command contained in a statute enacted by Congress pursuant to an express delegation of power enumerated in Article I."

Effects of the decision

The immediate effects of the ruling on the Brady Bill were negligible. The vast majority of local and state law enforcement officials supported the interim provisions and were happy to comply with the background checks. The issue ended with the completion of the federal background check database. However, *Mack and Printz v. United States* was an important ruling in support of States' Rights and limits on Federal power.

The political poles have reversed from *Mack and Printz*, especially after the attack on the World Trade Center; where *Mack and Printz* protected conservative local authorities from liberal federal power, it also now protects liberal local authorities from conservative federal power. Professor Ann Althouse has suggested, retained in its strong form, the anti-commandeering doctrine announced in *Mack and Printz* "can work as a safeguard for the rights of the people"; "the federal government might go too far in prosecuting the war on terrorism," *Mack and Printz* provides a circuit-breaker that might allow local and state officials to refuse to enforce regulations curbing individual rights. Moreover, "[b]y denying the means of commandeering to the federal government, the courts have created an incentive [for Congress] to adopt policies that inspire [rather than demand] compliance, thus preserving a beneficial structural safeguard for individual rights," and "state and local government autonomy can exert pressure on the federal government to moderate its efforts and take care not to offend constitutional rights."^[1]

See also

- List of United States Supreme Court cases, volume 521
- List of United States Supreme Court cases
- Lists of United States Supreme Court cases by volume

References

- [^] Althouse, Ann, Professor. *The Vigor of the Anti-Commandeering Doctrine in Times of Terror*, 69 Brook. L. Rev. 1231 (2004).

External sources

- [^] Text of *Mack and Printz v. United States*, 521 U.S. 898 (1997) is available from: Justia (<http://supreme.justia.com/us/521/898/case.html>) · Findlaw (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=521&page=898>)
- Note in Columbia Law Review distinguishing conditional preemption vs. commandeering (<http://74.125.93.132/search?q=cache:vF8ipRdwKIoJ:www.columbialawreview.org/assets/pdfs/108/2/Davis.pdf+conditional+preemption:+Printz+%E2%86%92regulate&cd=1&hl=en&ct=clnk&gl=us>)
- Very thorough analysis of the case (<http://books.google.com/books?id=x3kViV5hO0C&pg=PA52&dq=commandeering+printz&ei=tmc8Sra9O4GEzQSQ0PCFDw>)

Retrieved from "http://en.wikipedia.org/w/index.php?title=Printz_v._United_States&oldid=531139485"

Categories: United States Tenth Amendment case law | United States Supreme Court cases

| United States Supreme Court cases of the Rehnquist Court | 1997 in United States case law

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February 12, 2013

The Honorable Mike Chenault
Alaska State House of Representatives
State Capitol, Rm. 208
120 4th Street, Mail Stop 3100
Juneau AK 99801-1182

Dear Representative Chenault:

On behalf of the Alaska Peace Officers Association (APOA), I am writing in regards to HB 69, "An act exempting certain firearms and firearm accessories in this state from federal regulation; providing criminal penalties for federal officers who enforce or attempt to enforce a federal law, regulation, rule or order regulating certain firearms and firearm accessories in this state; and providing for an effective date".

The APOA Board of Directors recently reviewed this proposed legislation and found the bill flawed. We cannot support legislation which makes criminal the acts of law enforcement professionals who are acting in good faith to do their duty.

Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist you in your work for our state.

Sincerely,

John Lucking, Jr.
State President

Making A Difference In The Last Frontier



Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 69
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069SCSCS(JUD)-LAW-CRIM-03-19-13
Title: EXEMPT FIREARMS FROM FEDERAL
REGULATION
Sponsor: CHENAULT
Requester: (S) JUDICIARY

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This fiscal note reflects the most recent committee substitute as amended.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	03/19/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	03/19/13
	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SCS CSHB 69

Analysis

The committee substitute makes findings concerning the Second Amendment to the Constitution of the United States and the rights of Alaskans to keep and bear arms.

It would limit the use of state and municipal assets by a municipal or state agency so that these assets could not be used to implement laws that infringe on the rights of Alaskans to keep and bear arms.

It provides that a firearm or accessory that is possessed in the state (and not moved from it) is not subject to federal regulation under the federal government's authority to regulate interstate commerce.

It prohibits a federal statute, regulation, or rule from being enforced if it restricts ownership of a semiautomatic firearm or magazine, or if it requires a firearm to be registered.

The bill would give the state attorney general the authority to use all state resources necessary to prevent implementation of a federal statute that violates the rights of a resident of the state. SCS for CSHB 69(JUD) does not define the term "all state resources".

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 69
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069SCSCS(JUD)-DPS-DET-03-18-13
Title: EXEMPT FIREARMS FROM FEDERAL
REGULATION
Sponsor: CHENAULT
Requester: Senate Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

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

(Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Changes made by the Senate CS necessitated an updated analysis.

Prepared By: Lieutenant Rodney Dial
Division: Alaska State Troopers
Approved By: Joseph A. Masters, Commissioner
Department of Public Safety

Phone: (907)254-1284
Date: 03/18/2013 04:15 PM
Date: 03/18/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB069

Analysis

The Senate CS for CS for HB 69 prohibits state and municipal agencies from using assets (including funds, facilities, equipment, services, or other resources of the state) to implement or aid in the implementation of federal action that is unconstitutional in regards to the Second Amendment of the U.S. Constitution or that infringes on due process rights.

It also establishes legislative findings, and amends AS 44.99.500 (Alaska Firearms Freedom Act) to exempt possession of firearms, firearm accessories and ammunition from federal firearm control laws.

Passage of this bill will have no fiscal impact to the Division of Alaska State Troopers.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 69
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069SCSCS(JUD)-DOC-OC-03-18-13
Title: EXEMPT FIREARMS FROM FEDERAL
REGULATION
Sponsor: CHENAULT
Requester: (S)JUD

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This note reflects the changes made in the Senate CS.

Prepared By:	Kevin Worley, Director	Phone:	(907)465-4641
Division	Department of Corrections - Administrative Services	Date:	03/18/2013 08:30 AM
Approved By:	Leslie Houston, Deputy Commissioner	Date:	03/18/13
	Department of Corrections		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SCSCSHB 69 (JUD)

Analysis

This bill prohibits the use of state resources to implement certain federal statutes, regulations, or orders relating to the regulation of firearms and the Real ID Act. It also exempts certain firearms and firearm accessories from federal regulation.

This bill has no impact on the Department of Corrections.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 69 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069-LAW-CRIM-02-01-13
Title: EXEMPT FIREARMS FROM FEDERAL
REGULATION
Sponsor: CHENAULT
Requester: (H) Judiciary

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Loretta Withington, Division Operations Manager
Division: Administrative Services Division
Approved By: Michael C. Geraghty, Attorney General
Department of Law

Phone: (907)465-5427
Date: 02/01/2013 12:00 AM
Date: 02/01/13

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB 69

Analysis

House Bill 69 provides that a personal firearm or accessory that is possessed in the state is not subject to federal law or regulation under the interstate commerce authority.

The bill would also allow the Attorney General the discretion to defend a person prosecuted by the federal government for violation of federal law relating to the possession of a firearm or accessory in the state.

HB 69 also states that a federal law that would ban or restrict ownership of a semiautomatic firearm or magazine or require a firearm to be registered would not be enforceable in the state. Any federal official who enforces such a law would be subject to prosecution for a class B misdemeanor.

This zero fiscal note does not include the cost of litigating the enforceability of the bill.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 69 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069-DPS-DET-02-05-13
Title: EXEMPT FIREARMS FROM FEDERAL
REGULATION
Sponsor: CHENAULT
Requester: House Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Lieutenant Rodney Dial
Division: Alaska State Troopers
Approved By: Joseph A. Masters, Commissioner
Department of Public Safety

Phone: (907)254-1284
Date: 02/01/2013 08:15 AM
Date: 02/05/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB069

Analysis

This bill would amend AS 44.99.500 (Alaska Firearms Freedom Act) to exempt possession of firearms, firearm accessories and ammunition from federal firearm control laws, and prohibit the enforcement by federal officials of federal firearm laws enacted after the effective date of this bill if they restrict semi-automatic firearms or magazines or require registration of such items.

Passage of this bill will have no fiscal impact to the Division of Alaska State Troopers.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 69
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069CS(JUD)-DOC-OC-02-14-13
Title: EXEMPT FIREARMS FROM FEDERAL
REGULATION
Sponsor: CHENAULT
Requester: (H)JUD

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This fiscal note is updated to reflect the most recent committee substitute.
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Prepared By: Kevin Worley, Director
Division: Department of Corrections - Administrative Services
Approved By: Leslie Houston, Deputy Commissioner
Department of Corrections

Phone: (907)465-4641
Date: 02/14/2013 08:30 AM
Date: 02/14/13

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. CSHB 69 (JUD)

Analysis

This bill would make it a class C felony for a federal official to enforce a federal law which attempts to ban or restrict ownership of a semiautomatic firearm or magazine or require that a firearm or firearm accessory be registered. A person convicted of a class C felony may be sentenced to a term of not more than five years in prison.

This legislation is not expected to cause a dramatic increase in convictions which would require incarceration and, therefore, there is no fiscal impact to the Department.

Karen Lidster

From: Schroeder, Kaci K (DOC) <kaci.schroeder@alaska.gov>
Sent: Monday, March 18, 2013 8:21 AM
To: Karen Lidster
Subject: DOC and HB 69

Karen,

The CS for HB 69 that was adopted last week removes the criminal sanction portion of the original bill. Therefore, DOC is no longer implicated in the bill. If this is the version that Senate JUD decides to move out of committee please do not adopt the DOC fiscal note.

Please let me know if you have any questions. Have a great day!



KACI SCHROEDER
Special Assistant to the Commissioner II

Alaska Department of Corrections

802 3rd St • Douglas, AK 99824

Office: (907) 465-1854 • Cell: (907) 957-2167

Fax: (907) 465-3390 • kaci.schroeder@alaska.gov

★ CHOOSE RESPECT ★

Alaska State Legislature

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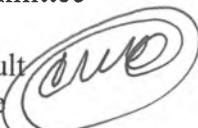
145 Main St. Loop
Second Floor
Kenai, Alaska 99611
Phone: 907-283-7223
Fax: 907-283-7184



REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

MEMORANDUM

TO: Senator John Coghill
Chair, Senate Judiciary Committee

FROM: Representative Mike Chenault 
Speaker, Alaska State House

DATE: March 4, 2013

RE: Request for Hearing, Committee Substitute for House Bill 69 (JUD)

Please consider this memorandum as a request to hear House Bill 69: Exempt Firearms from Federal Regulation, before the Senate Judiciary Committee at your convenience.

Back up materials have been forwarded to your committee aide.

Thank you for your consideration of my request. Call either myself or Tom Wright of my staff in the event either of us can provide further information.