

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 86/2

9846 HOUSE JUDICIARY

FISCAL NOTE

No. 4

Version: HB 102
 (H) Publish Date: 2/19/99

**STATE OF ALASKA
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Revenue
Title: <u>Federal Government Tobacco Settlement</u>	BRU	Revenue Operations
Sponsor: <u>RLS</u>	Component	Income and Excise Audit
Requester: <u>Governor</u>	Component Serial No.	<u>113</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attachment.

Prepared by	Tim Cottongim, Appeals Officer <i>[Signature]</i>	Phone <u>465-3695</u>
Division	Income and Excise Audit	Date/Time <u>February 5, 1999</u>
Approved by	<i>[Signature]</i>	Date <u>February 5, 1999</u>
Commissioner	Wilson L. Condon	
Agency	Department of Revenue	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

LEGISLATION TO ACCOMPANY TOBACCO SETTLEMENT

"MODEL STATUTE" - HB 102/SB 84

The Tobacco Settlement: The tobacco manufacturers that participated in the November 23, 1998, settlement with the states represent over 98 percent of the tobacco manufacturing industry. The participating manufacturers agreed to make payments to the state for their violations of state law and to restrict their marketing practices. Alaska's payments over 25 years will total nearly \$670 million. No legislation to approve the terms of the settlement is required. However, the Master Settlement Agreement (MSA) contemplates important legislation, referred to as the "Model Statute," to assure that all manufacturers of tobacco products are accountable to Alaskans for potential future costs associated with their tobacco sales in the state.

Overview of the Model Statute Legislation: The settlement contemplates that all states will pass a model statute, with the goal being to provide assurances that all companies that sell tobacco products, including those that did not participate in the settlement, are financially capable of fulfilling their economic obligations, if any, to citizens and to the states. The model statute will give all tobacco manufacturers that sell their products in a state the option to either 1) sign on to the settlement agreement or 2) establish an escrow account and pay into that account at a stated rate per unit of tobacco sold in the state. The rates are proportional to the payments to be made by the participating manufacturers under the settlement. In other words, a tobacco manufacturer that did not participate in the settlement agreement could not get around the restrictions in the settlement and sell its products in Alaska with impunity, leaving either individual Alaskans, or the state, to pay the costs of treating resulting illnesses.

In addition, passage of the model statute legislation will protect the state's annual payments from a potential, but unlikely, Non-Participating Manufacturer Adjustment (see explanation below).

This statute was the subject of extensive and difficult negotiations, including discussions on whether the statute would survive legal challenges. The statute was reviewed by a number of antitrust and constitutional law experts who opined that this statute would survive legal challenge. Except for a few minor procedural changes, SB 84 and HB 102 are identical to the Model Statute provided in Exhibit T of the MSA.

Importance of Model Statute: Alaska is not required to pass the model statute to receive payments under the terms of the settlement. However, if Alaska does not pass the model statute, it will risk a reduction in payments under the Non-Participating Manufacturer (NPM) Adjustment formula of the settlement. Passing and enforcing the model statute will protect against such a reduction.

The settlement provides for an adjustment to a state's payments if the participating manufacturers experience a disadvantage and lose in-state market share for sales of their tobacco products to non-participating manufacturers as a result of the marketing restrictions, payments, and other provisions in the settlement agreement. However, each state has a safe haven from the application of the reduction formula: if it passes the model statute and enforces it, the state will be exempt from any payment reductions even if the settlement was a significant factor contributing to the participating manufacturers' loss of market share. Indeed, even if a court were to find the statute unconstitutional, the maximum NPM Adjustment Alaska would have to bear is 65% of the payment in any particular year. Without the passage of the statute, the maximum NPM Adjustment would be 100%.

Sectional Analysis

Section One: Section One is the findings and purpose section of the model statute legislation. Section One identifies tobacco as a serious public health problem in Alaska and discusses the burden that treating tobacco-related illnesses places on the State of Alaska. This section also establishes that it is the policy of the State of Alaska that tobacco product manufacturers—not the state or its citizens—bear the financial costs of treating smoking-related illnesses. Section One establishes the need to prevent other non-participating manufacturers from reaping short-term profits in Alaska, while leaving the state and its citizens without any financial protection from the known harms related to cigarette smoking. Finally, Section One identifies the purpose of the model statute legislation as the implementation of the November 23, 1998, MSA

Section Two: Section Two amends Alaska Statutes, Title 45, by adding Chapter 53, which is entitled "Cigarette Sales."

Sec. 45.53.010 recognizes the MSA entered into between the State of Alaska, and the Participating Manufacturers in *State v. Philip Morris*, 1JU-97-915 CI.

Sec. 45.53.020 requires that all tobacco product manufacturers do one of two things: (1) participate in the MSA, or (2) establish an escrow account and place dollars into that account at a stated rate per unit sold in this state. The rates are calculated to be equivalent to the rates paid by the Subsequent Participating Manufacturers (tobacco companies that signed the MSA after it was signed by the four original participating manufacturers) pursuant to the MSA. The changes in the rates also mirror the changes in the MSA annual payments on a per unit basis.

A manufacturer who places funds in escrow is entitled to withdraw interest or other earnings from the account as they are earned. The principal deposited in escrow can be released from escrow only:

1. to pay a judgment or settlement on any claim brought by the State or a party located in or residing in Alaska;
2. if the manufacturer establishes that the amount it would have paid the State had it participated in the MSA is less than the amount the manufacturer is required to place in escrow. In this case the manufacturer is allowed to withdraw the excess from the escrow; or
3. if the funds have remained in escrow for a period of 25 years from the date of payment.

Sec. AS 45.53.030 requires the commissioner of revenue to adopt regulations under the Administrative Procedure Act necessary to determine the volume of cigarettes manufactured by a tobacco product manufacturer that enter Alaska for sale in the state based on the amount of excise taxes paid. This will allow the commissioner of revenue to determine whether a tobacco manufacturer that does not sign the Master Settlement Agreement is making the appropriate deposits into the escrow account provided under AS 45.53.020.

Sec. AS 45.53.040 provides for auditing by the Alaska Department of Revenue of payments into escrow required by a tobacco manufacturer and enforcement by the Alaska Department of Law. This section provides for different levels of penalties against a tobacco manufacturer that fails to make the required deposits into escrow. If enforcement by the department of law is required and

the state prevails in an action brought under this section, the court may award the department full reasonable attorney's fees.

Sec. AS 45.53.990 sets forth the definitions. Many of the bill's definitions incorporate by reference the definitions in the MSA. This was done to avoid any confusion between the two documents, and to prevent this legislation from being overly lengthy. The MSA is a public document approved by the Juneau Superior Court on February 9, 1999, in the case of *State of Alaska v. Philip Morris*, 1JU-97-915 CI. A complete copy of the MSA can be found at www.naag.org on the Internet.

Consequences If the Legislature Does Not Pass the Model Statute

It is important to note that the State of Alaska is **not** required to pass the model statute legislation. The MSA and the Consent Decree will remain in force and effect regardless of legislative action on this bill. However passage of this statute will help protect public health and will protect the state settlement payments from a possible draconian and dramatic reduction. The MSA provides for an adjustment to state payments if the disadvantages experienced as a result of the MSA are a significant factor contributing to the participating manufacturers' loss of market share, i.e., the "Non-Participating Manufacturer Adjustment" (NPM Adjustment) found on page 58, at Section IX (d), of the MSA

To illustrate the potential impact of the NPM Adjustment, assume the following hypothetical situation:

1. In 2003 the Original Participating Manufacturers' (as defined at Section II (hh) of the MSA) (OPMs) market share was reduced from 97.5% in 1997 to 93.5%;
2. The OPMs shipped fewer cigarettes into the United States and Puerto Rico in 2003 than they shipped in 1997;
3. The MSA was a "significant factor" contributing to the market share loss;
4. All states except Alaska, California, Colorado, and Wyoming have adopted a Model Statute; and
5. The year for which payments are being calculated is 2004.

Alaska's payments based on the above hypothetical would be calculated as follows if the state had not passed the model statute:

Step One: Calculate the total dollars to be adjusted. In this hypothetical the loss of market share for which an adjustment is required is 2%. That 2% is calculated by subtracting the 2003 market share of 93.5% from the 1997 market share of 97.5% for a total market share loss of 4%; however, the first 2% of the total market share loss is not counted as part of the NPM Adjustment calculations. Then multiply the 2% market share loss times 3, resulting in a total percentage adjustment of 6%. (Note: under the MSA each 1% loss in market share results in a 3% reduction until the loss in market share reaches 16 2/3%, at which time the percentage reduction is calculated at a variable ratio.)

The 2004 total annual payment of \$7,004,000,000.00 to all of the states is reduced by an NPM adjustment of 6%, or \$420,240,000.00.

Step Two: Allocate the \$420,240,000.00 among the four states that did not pass the Model Statute. The following illustrates the allocation method:

States	Allocation % Established in Exhibit A to the MSA	2004 payment without NPM adjustment	% share of NPM Adjustment	Total NPM Adjustment \$420,240,000.00	2004 adjusted Payments
CALIFORNIA	0.127639554	\$893,987,436.22	0.866846800	\$364,283,699.20	\$529,703,737.01
COLORADO	0.013708614	\$ 96,015,132.46	0.093100201	\$ 39,124,428.61	\$ 56,890,703.84
ALASKA	0.003414187	\$ 23,912,965.75	0.023186990	\$ 9,744,100.72	\$ 14,168,865.03
WYOMING	0.002483449	\$ 17,394,076.80	0.016866009	\$ 7,087,771.46	\$ 10,306,305.33
Totals	0.147245804	\$1,031,309,611.22	1.000000000	\$420,240,000.00	\$611,069,611.22

The "% share of NPM Adjustment" (fourth column above) is calculated pro rata based on the states' relative allocations given in Exhibit A to the MSA. For example, Alaska's allocation established in Exhibit A is .03414187% of the total allocation of the four states whose payments will be adjusted by the NPM Adjustment because they did not pass a Model Statute.

The NPM Adjustment is calculated each year. For instance, if the Participating Manufacturers continued to lose market share and the market share in 2005 remained at 93.5%, these four states would continue to experience an NPM Adjustment.

MASTER SETTLEMENT AGREEMENT

Participating Manufacturers pursuant to this subsection (c)(2) shall be subject to the Inflation Adjustment, the Volume Adjustment, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset, and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8). Such payments shall also be subject to the Non-Settling States Reduction; provided, however, that for purposes of payments due pursuant to this subsection (c)(2) (and corresponding payments by Subsequent Participating Manufacturers under subsection IX(i)), the Non-Settling States Reduction shall be derived as follows: (A) the payments made by the Original Participating Manufacturers pursuant to this subsection (c)(2) shall be allocated among the Settling States on a percentage basis to be determined by the Settling States pursuant to the procedures set forth in Exhibit U, and the resulting allocation percentages disclosed to the Escrow Agent, the Independent Auditor and the Original Participating Manufacturers not later than June 30, 1999; and (B) the Non-Settling States Reduction shall be based on the sum of the Allocable Shares so established pursuant to subsection (c)(2)(A) for those States that were Settling States as of the MSA Execution Date and as to which this Agreement has terminated as of the date 15 days before the payment in question is due.

(d) Non-Participating Manufacturer Adjustment.

(1) Calculation of NPM Adjustment for Original Participating Manufacturers. To protect the public health gains achieved by this Agreement, certain payments made pursuant to this Agreement shall be subject to an NPM

Adjustment. Payments by the Original Participating Manufacturers to which the NPM Adjustment applies shall be adjusted as provided below:

(A) Subject to the provisions of subsections (d)(1)(C), (d)(1)(D) and (d)(2) below, each Allocated Payment shall be adjusted by subtracting from such Allocated Payment the product of such Allocated Payment amount multiplied by the NPM Adjustment Percentage. The "NPM Adjustment Percentage" shall be calculated as follows:

(i) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is less than or equal to 0 (zero), then the NPM Adjustment Percentage shall equal zero.

(ii) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is greater than 0 (zero) and less than or equal to 16 2/3 percentage points, then the NPM Adjustment Percentage shall be equal to the product of (x) such Market Share Loss and (y) 3 (three).

(iii) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is greater than 16 2/3 percentage points, then the NPM Adjustment Percentage shall be equal to the sum of (x) 50 percentage points and (y) the product of (1) the Variable Multiplier and (2) the result of such Market Share Loss minus 16 2/3 percentage points.

(B) Definitions:

(i) "Base Aggregate Participating Manufacturer Market Share" means the result of (x) the sum of the applicable Market Shares (the applicable Market Share to be that for 1997) of all present and former Tobacco Product Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question is due minus (y) 2 (two) percentage points.

(ii) "Actual Aggregate Participating Manufacturer Market Share" means the sum of the applicable Market Shares of all present and former Tobacco Product Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question is due (the applicable Market Share to be that for the calendar year immediately preceding the year in which the payment in question is due).

(iii) "Market Share Loss" means the result of (x) the Base Aggregate Participating Manufacturer Market Share minus (y) the Actual Aggregate Participating Manufacturer Market Share.

(iv) "Variable Multiplier" equals 50 percentage points divided by the result of (x) the Base Aggregate Participating Manufacturer Market Share minus (y) $16 \frac{2}{3}$ percentage points.

(C) On or before February 2 of each year following a year in which there was a Market Share Loss greater than zero, a nationally recognized firm of economic consultants (the "Firm") shall determine whether the disadvantages experienced as a result of the provisions of this Agreement were a significant factor contributing to the Market Share Loss for the year in question. If the Firm determines that the disadvantages experienced as a result of the provisions of this Agreement were a significant factor contributing to the Market Share Loss for the year in question, the NPM Adjustment described in subsection IX(d)(1) shall apply. If the Firm determines that the disadvantages experienced as a result of the provisions of this Agreement were not a significant factor contributing to the Market Share Loss for the year in question, the NPM Adjustment described in subsection IX(d)(1) shall not apply. The Original Participating Manufacturers, the Settling States, and the Attorneys General for the Settling States shall cooperate to ensure that the determination described in this subsection (1)(C) is timely made. The Firm shall be acceptable to (and the principals responsible for this assignment shall be acceptable to) both the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question (or in the event no such firm or no such principals shall be acceptable to such parties, National Economic Research Associates, Inc., or its successors by merger, acquisition or otherwise ("NERA"), acting

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

through a principal or principals acceptable to such parties, if such a person can be identified and, if not, acting through a principal or principals identified by NERA, or a successor firm selected by the CPR Institute for Dispute Resolution). As soon as practicable after the MSA Execution Date, the Firm shall be jointly retained by the Settling States and the Original Participating Manufacturers for the purpose of making the foregoing determination, and the Firm shall provide written notice to each Settling State, to NAAG, to the Independent Auditor and to each Participating Manufacturer of such determination. The determination of the Firm with respect to this issue shall be conclusive and binding upon all parties, and shall be final and non-appealable. The reasonable fees and expenses of the Firm shall be paid by the Original Participating Manufacturers according to their Relative Market Shares. Only the Participating Manufacturers and the Settling States, and their respective counsel, shall be entitled to communicate with the Firm with respect to the Firm's activities pursuant to this subsection (1)(C).

(D) No NPM Adjustment shall be made with respect to a payment if the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico in the year immediately preceding the year in which the payment in question is due by those Participating Manufacturers that had become Participating Manufacturers prior to 14 days after the MSA Execution Date is greater than the aggregate number of Cigarettes shipped in or to the fifty United States, the

District of Columbia, and Puerto Rico in 1997 by such Participating Manufacturers (and any of their Affiliates that made such shipments in 1997, as demonstrated by certified audited statements of such Affiliates' shipments, and that do not continue to make such shipments after the MSA Execution Date because the responsibility for such shipments has been transferred to one of such Participating Manufacturers).

Measurements of shipments for purposes of this subsection (D) shall be made in the manner prescribed in subsection II(mm); in the event that such shipment data is unavailable for any Participating Manufacturer for 1997, such Participating Manufacturer's shipment volume for such year shall be measured in the manner prescribed in subsection II(z).

(2) Allocation among Settling States of NPM Adjustment for Original Participating Manufacturers.

(A) The NPM Adjustment set forth in subsection (d)(1) shall apply to the Allocated Payments of all Settling States, except as set forth below.

(B) A Settling State's Allocated Payment shall not be subject to an NPM Adjustment: (i) if such Settling State continuously had a Qualifying Statute (as defined in subsection (2)(E) below) in full force and effect during the entire calendar year immediately preceding the year in which the payment in question is due, and diligently enforced the provisions of such statute during such entire calendar year; or (ii) if such Settling State enacted the Model Statute (as defined in subsection (2)(E) below) for the first time during the calendar year immediately preceding the year in

which the payment in question is due, continuously had the Model Statute in full force and effect during the last six months of such calendar year, and diligently enforced the provisions of such statute during the period in which it was in full force and effect.

(C) The aggregate amount of the NPM Adjustments that would have applied to the Allocated Payments of those Settling States that are not subject to an NPM Adjustment pursuant to subsection (2)(B) shall be reallocated among all other Settling States pro rata in proportion to their respective Allocable Shares (the applicable Allocable Shares being those listed in Exhibit A), and such other Settling States' Allocated Payments shall be further reduced accordingly.

(D) This subsection (2)(D) shall apply if the amount of the NPM Adjustment applied pursuant to subsection (2)(A) to any Settling State plus the amount of the NPM Adjustments reallocated to such Settling State pursuant to subsection (2)(C) in any individual year would either (i) exceed such Settling State's Allocated Payment in that year, or (ii) if subsection (2)(F) applies to the Settling State in question, exceed 65% of such Settling State's Allocated Payment in that year. For each Settling State that has an excess as described in the preceding sentence, the excess amount of NPM Adjustment shall be further reallocated among all other Settling States whose Allocated Payments are subject to an NPM Adjustment and that do not have such an excess, pro rata in proportion to their respective Allocable Shares, and such other Settling States' Allocated

Payments shall be further reduced accordingly. The provisions of this subsection (2)(D) shall be repeatedly applied in any individual year until either (i) the aggregate amount of NPM Adjustments has been fully reallocated or (ii) the full amount of the NPM Adjustments subject to reallocation under subsection (2)(C) or (2)(D) cannot be fully reallocated in any individual year as described in those subsections because (x) the Allocated Payment in that year of each Settling State that is subject to an NPM Adjustment and to which subsection (2)(F) does not apply has been reduced to zero, and (y) the Allocated Payment in that year of each Settling State to which subsection (2)(F) applies has been reduced to 35% of such Allocated Payment.

(E) A "Qualifying Statute" means a Settling State's statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that effectively and fully neutralizes the cost disadvantages that the Participating Manufacturers experience vis-à-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of this Agreement. Each Participating Manufacturer and each Settling State agree that the model statute in the form set forth in Exhibit T (the "Model Statute"), if enacted without modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, shall constitute a Qualifying Statute. Each Participating Manufacturer agrees to support the enactment of such Model

Statute if such Model Statute is introduced or proposed (i) without modification or addition (except for particularized procedural or technical requirements), and (ii) not in conjunction with any other legislative proposal.

(F) If a Settling State (i) enacts the Model Statute without any modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, (ii) uses its best efforts to keep the Model Statute in full force and effect by, among other things, defending the Model Statute fully in any litigation brought in state or federal court within such Settling State (including litigating all available appeals that may affect the effectiveness of the Model Statute), and (iii) otherwise complies with subsection (2)(B), but a court of competent jurisdiction nevertheless invalidates or renders unenforceable the Model Statute with respect to such Settling State, and but for such ruling the Settling State would have been exempt from an NPM Adjustment under subsection (2)(B), then the NPM Adjustment (including reallocations pursuant to subsections (2)(C) and (2)(D)) shall still apply to such Settling State's Allocated Payments but in any individual year shall not exceed 65% of the amount of such Allocated Payments.

(G) In the event a Settling State proposes and/or enacts a statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that is not the Model Statute and asserts that such

statute, regulation, law and/or rule is a Qualifying Statute, the Firm shall be jointly retained by the Settling States and the Original Participating Manufacturers for the purpose of determining whether or not such statute, regulation, law and/or rule constitutes a Qualifying Statute. The Firm shall make the foregoing determination within 90 days of a written request to it from the relevant Settling State (copies of which request the Settling State shall also provide to all Participating Manufacturers and the Independent Auditor), and the Firm shall promptly thereafter provide written notice of such determination to the relevant Settling State, NAAG, all Participating Manufacturers and the Independent Auditor. The determination of the Firm with respect to this issue shall be conclusive and binding upon all parties, and shall be final and non-appealable; provided, however, (i) that such determination shall be of no force and effect with respect to a proposed statute, regulation, law and/or rule that is thereafter enacted with any modification or addition; and (ii) that the Settling State in which the Qualifying Statute was enacted and any Participating Manufacturer may at any time request that the Firm reconsider its determination as to this issue in light of subsequent events (including, without limitation, subsequent judicial review, interpretation, modification and/or disapproval of a Settling State's Qualifying Statute, and the manner and/or the effect of enforcement of such Qualifying Statute). The Original Participating Manufacturers shall severally pay their Relative Market Shares of the reasonable fees and expenses of the Firm. Only the

Participating Manufacturers and Settling States, and their respective counsel, shall be entitled to communicate with the Firm with respect to the Firm's activities pursuant to this subsection (2)(G).

(H) Except as provided in subsection (2)(F), in the event a Qualifying Statute is enacted within a Settling State and is thereafter invalidated or declared unenforceable by a court of competent jurisdiction, otherwise rendered not in full force and effect, or, upon reconsideration by the Firm pursuant to subsection (2)(G) determined not to constitute a Qualifying Statute, then such Settling State's Allocated Payments shall be fully subject to an NPM Adjustment unless and until the requirements of subsection (2)(B) have been once again satisfied.

(3) Allocation of NPM Adjustment among Original Participating Manufacturers. The portion of the total amount of the NPM Adjustment to which the Original Participating Manufacturers are entitled in any year that can be applied in such year consistent with subsection IX(d)(2) (the "Available NPM Adjustment") shall be allocated among them as provided in this subsection IX(d)(3).

(A) The "Base NPM Adjustment" shall be determined for each Original Participating Manufacturer in such year as follows:

(i) For those Original Participating Manufacturers whose Relative Market Shares in the year immediately preceding the year in which the NPM Adjustment in question is applied exceed or are

equal to their respective 1997 Relative Market Shares, the Base NPM Adjustment shall equal 0 (zero).

(ii) For those Original Participating Manufacturers whose Relative Market Shares in the year immediately preceding the year in which the NPM Adjustment in question is applied are less than their respective 1997 Relative Market Shares, the Base NPM Adjustment shall equal the result of (x) the difference between such Original Participating Manufacturer's Relative Market Share in such preceding year and its 1997 Relative Market Share multiplied by both (y) the number of individual Cigarettes (expressed in thousands of units) shipped in or to the United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers in such preceding year (determined in accordance with subsection II(mm)) and (z) \$20 per each thousand units of Cigarettes (as this number is adjusted pursuant to subsection IX(d)(3)(C) below).

(iii) For those Original Participating Manufacturers whose Base NPM Adjustment, if calculated pursuant to subsection (ii) above, would exceed \$300 million (as this number is adjusted pursuant to subsection IX(d)(3)(C) below), the Base NPM Adjustment shall equal \$300 million (or such adjusted number, as provided in subsection IX(d)(3)(C) below).

(B) The share of the Available NPM Adjustment each Original Participating Manufacturer is entitled to shall be calculated as follows:

(i) If the Available NPM Adjustment the Original Participating Manufacturers are entitled to in any year is less than or equal to the sum of the Base NPM Adjustments of all Original Participating Manufacturers in such year, then such Available NPM Adjustment shall be allocated among those Original Participating Manufacturers whose Base NPM Adjustment is not equal to 0 (zero) pro rata in proportion to their respective Base NPM Adjustments.

(ii) If the Available NPM Adjustment the Original Participating Manufacturers are entitled to in any year exceeds the sum of the Base NPM Adjustments of all Original Participating Manufacturers in such year, then (x) the difference between such Available NPM Adjustment and such sum of the Base NPM Adjustments shall be allocated among the Original Participating Manufacturers pro rata in proportion to their Relative Market Shares (the applicable Relative Market Shares to be those in the year immediately preceding such year), and (y) each Original Participating Manufacturer's share of such Available NPM Adjustment shall equal the sum of (1) its Base NPM Adjustment for such year, and (2) the amount allocated to such Original Participating Manufacturer pursuant to clause (x).

(iii) If an Original Participating Manufacturer's share of the Available NPM Adjustment calculated pursuant to subsection IX(d)(3)(B)(i) or IX(d)(3)(B)(ii) exceeds such Original Participating Manufacturer's payment amount to which such NPM Adjustment applies (as such payment amount has been determined pursuant to step B of clause "Seventh" of subsection IX(j)), then (1) such Original Participating Manufacturer's share of the Available NPM Adjustment shall equal such payment amount, and (2) such excess shall be reallocated among the other Original Participating Manufacturers pro rata in proportion to their Relative Market Shares.

(C) Adjustments:

(i) For calculations made pursuant to this subsection IX(d)(3) (if any) with respect to payments due in the year 2000, the number used in subsection IX(d)(3)(A)(ii)(z) shall be \$20 and the number used in subsection IX(d)(3)(A)(iii) shall be \$300 million. Each year thereafter, both these numbers shall be adjusted upward or downward by multiplying each of them by the quotient produced by dividing (x) the average revenue per Cigarette of all the Original Participating Manufacturers in the year immediately preceding such year, by (y) the average revenue per Cigarette of all the Original Participating Manufacturers in the year immediately preceding such immediately preceding year.

(ii) For purposes of this subsection, the average revenue per Cigarette of all the Original Participating Manufacturers in any year shall equal (x) the aggregate revenues of all the Original Participating Manufacturers from sales of Cigarettes in the fifty United States, the District of Columbia and Puerto Rico after Federal excise taxes and after payments pursuant to this Agreement and the tobacco litigation Settlement Agreements with the States of Florida, Mississippi, Minnesota and Texas (as such revenues are reported to the United States Securities and Exchange Commission ("SEC") for such year (either independently by the Original Participating Manufacturer or as part of consolidated financial statements reported to the SEC by an Affiliate of the Original Participating Manufacturers) or, in the case of an Original Participating Manufacturer that does not report income to the SEC, as reported in financial statements prepared in accordance with United States generally accepted accounting principles and audited by a nationally recognized accounting firm), divided by (y) the aggregate number of the individual Cigarettes shipped in or to the United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers in such year (determined in accordance with subsection II(mm)).

(D) In the event that in the year immediately preceding the year in which the NPM Adjustment in question is applied both (x) the Relative

Market Share of Lorillard Tobacco Company (or of its successor) ("Lorillard") was less than or equal to 20.0000000%, and (y) the number of individual Cigarettes shipped in or to the United States, the District of Columbia and Puerto Rico by Lorillard (determined in accordance with subsection II(mm)) (for purposes of this subsection (D), "Volume") was less than or equal to 70 billion, Lorillard's and Philip Morris Incorporated's (or its successor's) ("Philip Morris") shares of the Available NPM Adjustment calculated pursuant to subsections (3)(A)-(C) above shall be further reallocated between Lorillard and Philip Morris as follows (this subsection (3)(D) shall not apply in the year in which either of the two conditions specified in this sentence is not satisfied):

(i) Notwithstanding subsections (A)-(C) of this subsection (d)(3), but subject to further adjustment pursuant to subsections (D)(ii) and (D)(iii) below, Lorillard's share of the Available NPM Adjustment shall equal its Relative Market Share of such Available NPM Adjustment (the applicable Relative Market Share to be that in the year immediately preceding the year in which such NPM Adjustment is applied). The dollar amount of the difference between the share of the Available NPM Adjustment Lorillard is entitled to pursuant to the preceding sentence and the share of the Available NPM Adjustment it would be entitled to in the same year pursuant to subsections (d)(3)(A)-(C) shall be reallocated to Philip Morris and used to decrease or increase, as the case may be,

Philip Morris's share of the Available NPM Adjustment in such year calculated pursuant to subsections (d)(3)(A)-(C).

(ii) In the event that in the year immediately preceding the year in which the NPM Adjustment in question is applied either (x) Lorillard's Relative Market Share was greater than 15.0000000% (but did not exceed 20.0000000%), or (y) Lorillard's Volume was greater than 50 billion (but did not exceed 70 billion), or both, Lorillard's share of the Available NPM Adjustment calculated pursuant to subsection (d)(3)(D)(i) shall be reduced by a percentage equal to the greater of (1) 10.0000000% for each percentage point (or fraction thereof) of excess of such Relative Market Share over 15.0000000% (if any), or (2) 2.5000000% for each billion (or fraction thereof) of excess of such Volume over 50 billion (if any). The dollar amount by which Lorillard's share of the Available NPM Adjustment is reduced in any year pursuant to this subsection (D)(ii) shall be reallocated to Philip Morris and used to increase Philip Morris's share of the Available NPM Adjustment in such year.

(iii) In the event that in any year a reallocation of the shares of the Available NPM Adjustment between Lorillard and Philip Morris pursuant to this subsection (d)(3)(D) results in Philip Morris's share of the Available NPM Adjustment in such year exceeding the greater of (x) Philip Morris's Relative Market Share

of such Available NPM Adjustment (the applicable Relative Market Share to be that in the year immediately preceding such year), or (y) Philip Morris's share of the Available NPM Adjustment in such year calculated pursuant to subsections (d)(3)(A)-(C), Philip Morris's share of the Available NPM Adjustment in such year shall be reduced to equal the greater of (x) or (y) above. In such instance, the dollar amount by which Philip Morris's share of the Available NPM Adjustment is reduced pursuant to the preceding sentence shall be reallocated to Lorillard and used to increase Lorillard's share of the Available NPM Adjustment in such year.

(iv) In the event that either Philip Morris or Lorillard is treated as a Non-Participating Manufacturer for purposes of this subsection IX(d)(3) pursuant to subsection XVIII(w)(2)(A), this subsection (3)(D) shall not be applied, and the Original Participating Manufacturers' shares of the Available NPM Adjustment shall be determined solely as described in subsections (3)(A)-(C).

(4) NPM Adjustment for Subsequent Participating Manufacturers.

Subject to the provisions of subsection IX(i)(3), a Subsequent Participating Manufacturer shall be entitled to an NPM Adjustment with respect to payments due from such Subsequent Participating Manufacturer in any year during which an NPM Adjustment is applicable under subsection (d)(1) above to payments due

HB

103

A M E N D M E N T #1

OFFERED IN THE HOUSE
TO: CSHB 103(CRA)

BY REPRESENTATIVE DYSON

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

*3/22
adopted*



REPRESENTATIVE FRED DYSON

Alaska State Legislature

1000 W. Valdez
4th Eagle River Building
Eagle River, Alaska 99577
☎ (907) 694-0115
FAX (907) 694-0115

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

Toll free (800) 342-2199

MEMORANDUM

March 2, 1999

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

From: Representative Fred Dyson

Subject: Request to schedule HB 103 

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

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

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



REPRESENTATIVE FRED DYSON

Alaska State Legislature

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

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

Toll free 800-342-2199

HB 103 Sponsor Statement

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

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

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

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

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

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

Alaska Outdoor Council Testimony
House Bill 103

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

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

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

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

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

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

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

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



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

March 11, 1999

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

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

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

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

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

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

Please support Senate Bill 77 and House Bill 103.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Targeting Gun Makers With a Cigarette Strategy

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

By Roberto Suro

In a bitter wave of litigation that could have the next legal assault on the gun industry. City governments across the country are preparing lawsuits to sue the big handgun manufacturers responsible for the multibillion-dollar costs of violent crimes.

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

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

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

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

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

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

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

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

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

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

In the Line of Fire



Age	1986
0-4	85
5-9	101
10-14	510
15-19	1,950
20-24	4,816
25-29	9,989
30-34	3,414
35-39	3,318
40-44	2,746
45-49	2,289
50-54	1,693
55-59	1,317
60-64	1,077
65-69	1,191
70-74	1,161
75-79	1,027
80-84	785
85+	546
Unknown	28
Total	34,040

SOURCE: National Center for Health Statistics

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

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

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

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

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

"We are going to get into a phase of discovery that will open the gun industry to a kind of scrutiny that has never existed in this country," says David Kairys, a gun control lawyer at Temple University, who helped Chicago bring suits against and sue a former AWP distributor.

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

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

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

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

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

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

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

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

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

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

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

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

fact that a person is a smoker does not mean that he or she is negligent. In the gun suits, however, the harm is not the gun itself but the crime committed with it.

There is also the question of the gun's design. Manufacturers argue that guns are designed to be used properly. And many cities are arguing that guns are designed to be used in ways that are not intended by the manufacturer.

"There has been a trend toward 'personalized' products," says Ricker, expressing concern that it cannot be held liable for crimes that result from crimes or accidents.

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

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

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

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

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

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

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

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

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

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

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

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

RELATED STORIES:

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

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

[Over a S. murder rate, gun industry guns up](#)
January 2, 1999

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

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

RELATED SITES:

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

[National Rifle Association](#)

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

Note: Pages will open in a new browser window

External sites are not endorsed by CNN Interactive

Home
About Us
Contact Us
Privacy Policy
Terms of Service

DISCUSSION

Message Board
Chat
Feedback

SITE GUIDES

help
contents
search

FASTER ACCESS

Europe
Japan

WEB SERVICES

UPS Global Business Center



FIND books
barnesandnoble.com

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

80

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

The Brooklyn case

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

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

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

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

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

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

The plaintiffs in the Brooklyn case argued handgun makers



BACKGROUND:

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

Windows Media:
28K 80K

- [Targeting guns at the source](#)

TIMELINE:

- [Guns and the Law](#)

INTERACTIVE MAPS:

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

MESSAGE BOARD:

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

OTHER SITES

POLL:

Should gun manufacturers be held liable for gun violence?

- Yes
 No
 Sometimes

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

Jumping the Gun?

Attacks on Firearms Echo Earlier Assaults On Tobacco Industry

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

'Cigarettes Can Only Kill You'

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

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

Not so fast.

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

On the Sidelines

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

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

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

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

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

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

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

Shallow Pockets

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

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

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

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

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

Please Turn to Page A6, Column 1

Reluctant Witness

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

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

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

'Pressure Will Build'

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

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

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

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

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

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

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

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

Mixed Messages

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

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

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

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

Jumping the Gun?

Attacks on Firearms Echo Earlier Assaults On Tobacco Industry

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

'Cigarettes Can Only Kill You'

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

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

Not so fast.

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

On the Sidelines

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

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

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

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

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

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

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

Shallow Pockets

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

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

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

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

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

Please Turn to Page A6, Column 1

Reluctant Witness

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

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

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

'Pressure Will Build'

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

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

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

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

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

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

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

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

Mixed Messages

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

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

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

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

Subject: Mar 16 Committee Hearing on House Bill 103

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

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

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

Please call for the hearing on the Community and Regional Affairs Committee Tuesday, 9 Mar 99, 10:00 AM. Because I will be at work, I will not be able to attend. Please call for more information.

To: USA, Washington

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

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

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

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

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

Regards
Mike Coors



March 9, 1999

Congress Targets Gun Lawsuits

AP INDEXES THE STATES NEWS SERVICES BUSINESS TECHNOLOGY ENTERTAINMENT

Filed at 3:56 p.m. EST

By The Associated Press

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

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

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

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

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

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

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



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

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

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

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

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

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

NEW YORK

ADVERTISEMENT

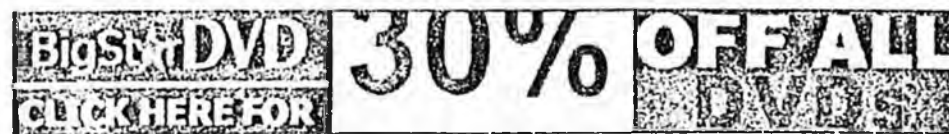
Gun lobbyists have taken note of a ruling last month in Federal District Court in Brooklyn. In a lawsuit filed by private citizens, a jury held 9 of 25 gun manufacturers liable for three shootings that involved illegally obtained handguns.

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

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

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

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

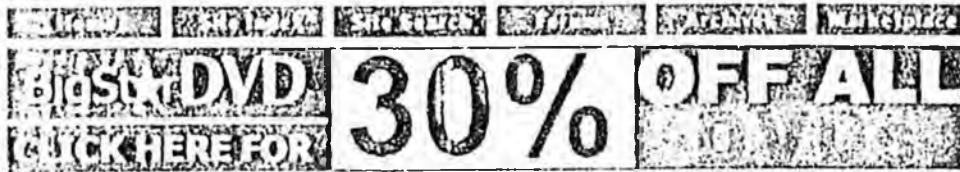


[Home](#) | [Site Index](#) | [Site Search](#) | [Forums](#) | [Archives](#) | [Marketplace](#)

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

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

Copyright 1999 The New York Times Company



March 10, 1999

A Republican Seeks to Ban Suits Against Gun Makers

Related Articles

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



Forum

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

By LIZETTE ALVAREZ

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

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

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

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

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

FISCAL NOTE

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

Expenditures/Revenues Thousands of Dollars

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

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

REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

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

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

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

HB

108

4/7

CS FOR HOUSE BILL NO. 108()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Halcro, Phillips, Kerttula

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the use, operation, and regulation of boats; establishing a
2 uniform state waterway marking system; and providing for an effective date."

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

4 * **Section 1. INTENT.** It is the intent of the legislature that at least 75 percent of any
5 federal funds generated as a result of this Act be used to fund a statewide boating safety and
6 education program, and that the state program operate in conjunction with the United States
7 Coast Guard Auxiliary boating safety program and other marine education organizations.

8 * **Sec. 2.** AS 05.25.010 is repealed and reenacted to read:

9 **Sec. 05.25.010. Safety requirements.** (a) Except as otherwise provided by
10 law, a boat placed on the water of the state

11 (1) must be equipped with and use the sound producing devices and
12 visual distress signals of the same number, type, and specifications as required by the
13 United States Coast Guard;

14 (2) that is equipped with a gasoline engine for electrical generation,

1 mechanical power, or mechanical propulsion must also be equipped with the
2 ventilation systems and backfire flame control devices of the same type and
3 specifications as required by the United States Coast Guard; and

4 (3) that is equipped with an engine for electrical generation, mechanical
5 power, or mechanical propulsion must also be equipped with the fire extinguishers of
6 the same number, type, and specifications as required by the United States Coast
7 Guard.

8 (b) The provisions of (a) of this section apply regardless of whether the boat
9 is placed or operated on water of the state subject to federal jurisdiction.

10 (c) During the period of time extending from sunset to sunrise and during
11 periods of restricted visibility, a boat placed on water of the state must display lights
12 of the same number, type, and specifications as required by the United States Coast
13 Guard under 33 U.S.C. 1602 and 33 U.S.C. 2002.

14 (d) A boat on water of the state must carry one United States Coast Guard
15 approved Type I, Type II, or Type III personal flotation device in serviceable condition
16 for each person on board the boat. A Type V personal flotation device may be carried
17 in lieu of a personal flotation device required in this subsection if the Type V personal
18 flotation device is in serviceable condition and

19 (1) if the approval label on the Type V personal flotation device
20 indicates that the device is approved for the activity in which the boat is being used,
21 or that the device is approved as a substitute for a personal flotation device of the type
22 required on the boat; and

23 (2) for a device that contains a reference to an owner's manual, if the
24 Type V personal flotation device is used in accordance with the requirements in the
25 owner's manual.

26 (e) In addition to the requirements in (d) of this section, a boat that is 16 feet
27 or longer, other than a kayak or canoe, must carry one Type IV personal flotation
28 device that can be thrown and that is approved by the United States Coast Guard.

29 (f) A person may not use a flashing or revolving red or blue emergency light
30 on a boat unless the boat is operated by a peace officer or emergency professional in
31 the performance of official duties.

1 (g) The operator of a boat on water of the state may not transport a person
2 under 13 years of age on the deck of a boat or in an open boat unless the person is
3 wearing a United States Coast Guard approved Type I, Type II, or Type III personal
4 flotation device. A Type V personal flotation device may be worn in lieu of a
5 personal flotation device required in this subsection if the Type V personal flotation
6 device is in serviceable condition and

7 (1) if the approval label on the Type V personal flotation device
8 indicates that the device is approved for the activity in which the boat is being used,
9 or that the device is approved as a substitute for a personal flotation device of the type
10 required on the boat; and

11 (2) for a device that contains a reference to an owner's manual, if the
12 Type V personal flotation device is used in accordance with the requirements in the
13 owner's manual.

14 (h) The department may require, by regulation, that a boat or class of boats
15 carry additional equipment that is necessary for the safety of persons and property.

16 * Sec. 3. AS 05.25.020 is amended to read:

17 **Sec. 05.25.020. Use of boat with water [WATER] skis and surfboards.** (a)
18 A person may not operate a boat [WATERCRAFT] on water [THE INLAND
19 WATERS] of the [THIS] state for towing a person on water skis, [OR] a surfboard,
20 or a similar device [DEVICES] unless

21 (1) the boat [WATERCRAFT] is equipped with a rearview mirror in
22 which the person being towed can be viewed; [,] or

23 (2) there is, in the boat, [WATERCRAFT] a person of 12 years of age
24 or older in addition to the operator [,] in a position to observe the progress of the
25 person being towed.

26 (b) A person may not operate a boat [WATERCRAFT] on [THE] water of the
27 state to tow a person under 13 years of age on water skis, a surfboard, or a similar
28 device unless the person being towed is wearing a United States Coast Guard approved

29 (1) Type I, Type II, or Type III personal flotation device; or

30 (2) Type V personal flotation device if the Type V personal
31 flotation device is in serviceable condition and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(A) if the approval label on the Type V personal flotation device indicates that the device is approved for the activity;

(B) for a device that contains a reference to an owner's manual, if the Type V personal flotation device is used in accordance with the requirements in the owner's manual [. IN THIS SUBSECTION, "PERSONAL FLOTATION DEVICE" DOES NOT INCLUDE A LIFE BELT OR LIFE RING].

* Sec. 4. AS 05.25.030 is repealed and reenacted to read:

Sec. 05.25.030. Boat collisions, accidents, and casualties. (a) The operator of a boat involved in a collision, accident, or casualty shall

(1) render assistance as is practicable and necessary to save other persons from danger or to minimize the danger to other persons to the extent that the operator can do so without serious danger to the operator's boat, crew, and passengers; and

(2) give the operator's name, address, and identification number of the operator's boat in writing to each person injured in the collision, accident, or casualty and to the owner of property damaged in the collision, accident, or casualty.

(b) For the purpose of gathering boating accident statistics, the operator of a boat involved in a collision, accident, or casualty that results in death or injury to a person, or damage to property in excess of \$500 for each incident, shall file a report with the department on or before the 20th day after the incident. The department shall prepare a form for the report and make the form available to other agencies and to the public.

(c) In response to a request from an authorized official or agency of the United States, a law enforcement agency, or in compliance with United States Coast Guard regulations, the department shall provide statistical information compiled or otherwise available to the department from the reports required under (b) of this section.

* Sec. 5. AS 05.25.040 is amended to read:

Sec. 05.25.040. Owner's civil liability. The owner of a boat [WATERCRAFT] is liable for injury or damage caused by the negligent operation of the owner's boat [WATERCRAFT] whether the negligence consists of a violation of

1 a state statute [,] or the failure [NEGLECTING] to exercise [OBSERVE] ordinary
2 care in the operation of the boat [WATERCRAFT] as the rules of the common law
3 require. The owner is not liable, however, unless the boat [WATERCRAFT] is used
4 with the owner's express or implied consent. It is presumed that the boat
5 [WATERCRAFT] is being operated with the knowledge and consent of the owner [,]
6 if, at the time of the injury or damage, it is under the control of the owner's spouse,
7 father, mother, brother, sister, son, daughter, or other member of the owner's immediate
8 family. This chapter does not relieve any other person from a liability that the person
9 would otherwise incur [,] and does not authorize or permit recovery in excess of injury
10 or damage actually incurred.

11 * Sec. 6. AS 05.25.050 is amended to read:

12 **Sec. 05.25.050. Declaration of policy.** It is the policy of the [THIS] state to
13 promote safety for persons and property in and connected with the use, operation, and
14 equipment of boats on water of the state [VESSELS IN RECREATIONAL
15 PURSUITS IN INLAND WATERS] and to promote uniformity of laws relating to
16 boat safety [THERETO].

17 * Sec. 7. AS 05.25 is amended by adding new sections to read:

18 **Sec. 05.25.052. Uniform state waterway marking system.** The department
19 shall develop and adopt regulations establishing a uniform state waterway marking
20 system for the placement of regulatory markers. The regulations must be compatible
21 with the system of aids to navigation prescribed by the United States Coast Guard.

22 **Sec. 05.25.053. Boating safety program.** (a) The department shall administer
23 a statewide boating safety program. The program must, to the extent consistent with
24 state law,

25 (1) secure the full benefits available to the state under 46 U.S.C. 13101
26 - 13110 (Federal Boat Safety Act of 1971); and

27 (2) take additional actions necessary to gain initial and ongoing federal
28 acceptance of the boating safety program and to qualify and apply for federal money
29 under 46 U.S.C. 13102.

30 (b) The department shall cooperate with local, state, and federal agencies,
31 private and public organizations, and individuals to provide for

- 1 (1) education on boating safety;
- 2 (2) a boat registration and numbering system through the Department
- 3 of Administration;
- 4 (3) a boating collisions, accidents, and casualties reporting system;
- 5 (4) boating access;
- 6 (5) boating safety patrol and law enforcement activity;
- 7 (6) a uniform state waterway marking system; and
- 8 (7) a boating safety advisory council as described in AS 05.25.057.

9 **Sec. 05.25.055. Registration and numbering of boats.** (a) An
10 undocumented boat placed on water of the state must be registered and numbered as
11 required by this chapter. The Department of Administration shall adopt by regulation
12 a boat registration and numbering system that is consistent with the national standard
13 for state numbering systems established by the United States Coast Guard.

14 (b) In adopting a boat registration system under (a) of this section, the
15 Department of Administration shall authorize agents, including boat dealers, to register
16 boats.

17 (c) A boat dealer shall require a purchaser of a new or used boat sold at retail
18 to complete a registration application and pay the registration fee before the boat
19 leaves the dealer's premises unless the boat is exempt from registration and numbering
20 under this chapter or regulations adopted under this chapter.

21 (d) A person may not operate a boat on water of the state unless a valid
22 certificate of number has been awarded by the Department of Administration to the
23 boat and the identification number and any required validation decals are properly
24 displayed on the boat.

25 (e) The Department of Administration shall authorize agents to accept an
26 application and registration fee for registration, to issue a registration, and to forward
27 the application and registration fee to the Department of Administration.

28 (f) Unless otherwise provided by this chapter, or unless the owner has been
29 awarded a current, valid Alaska certificate of number from the United States Coast
30 Guard, the owner of a boat for which a current certificate of number has been awarded
31 under federal law or a federally approved numbering system of another state shall

1 apply for a certificate of number in this state as required by this chapter if the boat is
2 operated on water of the state for more than 90 consecutive days. If a boat has an
3 existing number, the owner may request that the department issue the same number for
4 purposes of this section, and the department shall comply with the request unless
5 compliance would result in a duplication of numbers.

6 (g) A certificate of number issued under this chapter is valid for three years
7 unless terminated or discontinued earlier as required by this chapter and regulations
8 adopted under this chapter. The certificate expires on the last day of the month at the
9 end of the three-year period. The expiration date shall be indicated on the certificate.

10 (h) All records of ownership of boats that are kept by the Department of
11 Administration under this section are public records. The Department of
12 Administration shall provide records of ownership to the Department of Natural
13 Resources for the purposes of meeting the federal requirements for state programs and
14 implementing this chapter.

15 (i) The following boats are exempt from the numbering and registration
16 provisions of this section:

17 (1) a boat that is operated in this state for a period not exceeding 90
18 consecutive days and that has a current, valid certificate of number issued by another
19 state having a federally approved numbering system;

20 (2) a foreign boat operated in water of the state for a period not
21 exceeding 90 consecutive days;

22 (3) a boat owned by the United States or an entity or political
23 subdivision of the United States, or a boat owned by a state or an entity or political
24 subdivision of a state;

25 (4) a boat that is not equipped with mechanical propulsion, that is
26 exclusively paddled, poled, rowed, or powered by wind, and that is under 10 feet in
27 length;

28 (5) a boat with a valid document to operate the boat that is issued by
29 the United States or a foreign government.

30 **Sec. 05.25.057. Alaska Boating Safety Council established.** (a) The Alaska
31 Boating Safety Council is established in the department.

1 (b) The council consists of seven members appointed by the governor. The
2 governor shall appoint each member on the basis of interest in public affairs,
3 knowledge of boating issues as they relate to both safety and water of the state, and
4 good judgment and ability concerning boating safety. At least four members of the
5 council shall represent powerboat interests. The appointed members shall be residents
6 of the state and shall be appointed without regard to political affiliation or geographical
7 location of residence. The commissioner is not a member of the council, but shall be
8 ex officio secretary.

9 (c) Members of the council receive no compensation for services on the
10 council, but are entitled to per diem and travel expenses authorized for boards under
11 AS 39.20.180.

12 (d) In this section, "council" means the Alaska Boating Safety Council.

13 * Sec. 8. AS 05.25.060 is repealed and reenacted to read:

14 **Sec. 05.25.060. Prohibited operation.** A person may not operate a boat on
15 water of the state

16 (1) for a recreational purpose or another purpose, or tow water skis, a
17 surfboard, or a similar device, in a reckless or negligent manner so as to endanger the
18 life or property of another person;

19 (2) that is not equipped as required under this chapter and regulations
20 adopted under this chapter; or

21 (3) in a manner that is inconsistent with a regulatory marker authorized
22 under regulations adopted by the department under this chapter.

23 * Sec. 9. AS 05.25.070 is amended to read:

24 **Sec. 05.25.070. Exemptions.** Boats [WATERCRAFT] and persons operating
25 boats [WATERCRAFT] are exempt from this chapter [, EXCEPT AS 05.25.060(b),]
26 when participating in the area set aside for a public regatta, race, marine parade,
27 tournament, or exhibition on inland water; for purposes of this section, "inland
28 water" means water of the state that is not offshore water [WATERS].

29 * Sec. 10. AS 05.25.080 is repealed and reenacted to read:

30 **Sec. 05.25.080. Enforcement.** A peace officer may enforce this chapter and
31 regulations adopted under this chapter and in the exercise of enforcement may stop and

1 board a boat subject to this chapter. A peace officer may issue a citation as provided
2 in AS 12.25.180 to a person who violates a provision of this chapter.

3 * Sec. 11. AS 05.25.090 is repealed and reenacted to read:

4 Sec. 05.25.090. Penalties. (a) Except as provided in (b) of this section, a
5 person who violates a provision of this chapter or regulations adopted under this
6 chapter is guilty of a class A misdemeanor. *- safety* *- was 20* *- provisions*

7 (b) A person who violates AS 05.25.010, 05.25.020, 05.25.060(2) or (3), or a
8 regulation adopted under this chapter relating to AS 05.25.010 or 05.25.020 is guilty
9 of a violation as defined in AS 11.81.900 and may be fined up to \$500. The supreme
10 court shall establish by order or rule a schedule of bail amounts for violations under
11 this subsection that allow the disposition of a citation without a court appearance.

12 * Sec. 12. AS 05.25 is amended by adding a new section to read:

13 Sec. 05.25.095. Regulations. (a) Except as provided in (c) - (e) of this
14 section, the department may adopt regulations to implement this chapter, including
15 regulations regarding

16 (1) boat and associated safety equipment requirements, including
17 additional equipment as described in AS 05.25.010;

18 (2) uniform waterway markers;

19 (3) boat operation and safety requirements; and

20 (4) requirements for certification of programs on boating safety
21 education.

22 (b) In consultation with the department, the Department of Administration may
23 adopt regulations to implement this chapter with respect to the numbering, marking,
24 and titling of undocumented boats.

25 (c) Regulations adopted under this chapter may not be less stringent than
26 applicable minimum requirements of regulations governing recreational boat safety of
27 the United States Coast Guard.

28 (d) The department may not adopt a regulation under this section regarding
29 boating safety if, before or during the period for public comment on the proposed
30 regulation provided by AS 44.62.190, the Alaska Boating Safety Council provides the
31 department with a written objection regarding the regulation, unless the department

1 modifies the proposed regulation to satisfy the objection. The prohibition of this
2 subsection does not apply if modification of the proposed regulation to satisfy the
3 council's objection would result in

4 (1) failure to meet a federal stringency requirement described under (c)
5 of this section; or

6 (2) a regulation that is not consistent with another provision of law.

7 (e) Nothing in this section authorizes the department to prohibit a use of or
8 access to the water of the state by a person or user group.

9 * **Sec. 13.** AS 05.25 is amended by adding a new section to read:

10 **Sec. 05.25.096. Fees.** (a) The Department of Administration shall assess the
11 following fees:

12 (1) motorized boat registration, registration renewal, and transfer of
13 registration, \$24 for a three-year period;

14 (2) nonmotorized boat registration, registration renewal, and transfer of
15 registration, \$10 for a three-year period;

16 (3) replacement of lost registration, \$5;

17 (4) replacement of lost registration validation decals, \$5.

18 (b) The Department of Administration shall separately account for fees
19 collected under (a) of this section for boat registration that are deposited in the general
20 fund. The annual estimated balance in that account may be used by the legislature to
21 make appropriations to the department and the Department of Administration to carry
22 out the purposes of this chapter.

23 * **Sec. 14.** AS 05.25.100 is repealed and reenacted to read:

24 **Sec. 05.25.100. Definitions.** In this chapter, unless the context requires
25 otherwise,

26 (1) "aids to navigation" means buoys, beacons, or other fixed objects
27 in the water that are used to mark obstructions to navigation or to direct navigation
28 through safe channels;

29 (2) "boat" means watercraft used or capable of being used as a means
30 of transportation on water, except for

31 (A) a ship's lifeboat;

- 1 (B) a seaplane;
- 2 (C) an inspected passenger vessel; and
- 3 (D) a single air mattress, single inner tube, or other water toy;
- 4 (3) "boat dealer" means a person engaged wholly or in part in the
- 5 business of selling or offering for sale, buying or taking in trade for the purpose of
- 6 resale, or exchanging, displaying, demonstrating, or offering for sale three or more
- 7 boats within 12 consecutive months and who receives or expects to receive money,
- 8 profit, or any other thing of value;
- 9 (4) "certificate of number" means the document bearing the
- 10 identification number issued to a boat by the Department of Administration under this
- 11 chapter, by a federal agency, or by the state of principal use under a federally
- 12 approved numbering system;
- 13 (5) "commissioner" means the commissioner of natural resources;
- 14 (6) "department" means the Department of Natural Resources;
- 15 (7) "operate" means to navigate or to be in actual physical control of
- 16 a boat used or capable of being used as a means of transportation on water of the state;
- 17 (8) "owner" means a person who has a property interest other than a
- 18 security interest in a boat and the right of use or possession of the boat; "owner" does
- 19 not include a lessee unless the lease is intended as security;
- 20 (9) "ownership" means a property interest other than a security interest;
- 21 (10) "passenger" means a person on board a boat who is not the master,
- 22 operator, crew member, or other person engaged in a capacity in the business of the
- 23 boat;
- 24 (11) "regulatory marker" means an anchored or fixed marker in or on
- 25 the water, or sign on the shore or on a bridge over the water, other than aids to
- 26 navigation; "regulatory marker" includes swimming markers, bathing markers, speed
- 27 zone markers, identification markers, danger zone markers, boat keep out areas, special
- 28 anchorage areas, and mooring buoys;
- 29 (12) "serviceable condition" as applied to personal flotation devices
- 30 means
- 31 (A) metal or plastic hardware is not broken, deformed, or

1 weakened by corrosion;

2 (B) webbings or straps are not ripped, torn, or separated from
3 an attachment point;

4 (C) there are no rotted or deteriorated structural components that
5 fail when tugged;

6 (D) there are no rips, tears, or open seams in fabric or coatings
7 that are large enough to allow the loss of buoyant material;

8 (E) buoyant material has not become hardened, nonresilient,
9 permanently compressed, waterlogged, or oil-soaked, and does not show
10 evidence of fungus or mildew;

11 (F) there is no loss of buoyant material or evidence of buoyant
12 material that is not securely held in position;

13 (G) there is a properly armed inflation mechanism, complete
14 with a full inflation medium cartridge and all status indicators showing that the
15 inflation mechanism is properly armed, unless the PFD is worn inflated;

16 (H) inflatable chambers are all capable of holding air;

17 (I) oral inflation tubes are not blocked, detached, or broken;

18 (J) the manual inflation lanyard or lever is not inaccessible,
19 broken, or missing;

20 (K) inflator status indicators are not broken or otherwise non-
21 functional;

22 (13) "undocumented boat" means a boat that does not possess a valid
23 certificate of documentation issued by the United States Coast Guard under 46 U.S.C.
24 12101 - 12123;

25 (14) "validation decal" means a decal that has the state of registration
26 and registration expiration year clearly marked;

27 (15) "water of the state" has the meaning given in the term "navigable
28 water" in AS 38.05.965; "water of the state" also includes the marginal sea adjacent
29 to the state and the high seas within the territorial limits of the state, irrespective of
30 the ownership of the land underlying those waters.

31 * Sec. 15. AS 09.25.120(a) is amended by adding a new paragraph to read:

1 (9) reports submitted under AS 05.25.030 concerning certain collisions,
2 accidents, or other casualties involving boats.

3 * Sec. 16. AS 12.25.190(c) is amended to read:

4 (c) The person cited for the crime shall give a written promise to appear in
5 court by signing at least one copy of the written citation prepared by the peace officer,
6 and the officer shall deliver a copy of the citation to the person. The written promise
7 requirement of this subsection does not apply to boating citations for which a bail
8 schedule has been established under AS 05.25.090(b), motor vehicle and traffic
9 citations for which a bail or fine schedule has been established under AS 28.05.151,
10 fish and game citations for which a bail schedule has been established under
11 AS 16.05.165, citations issued under AS 04.21.065, citations issued under
12 AS 18.35.341, citations issued in state park and recreational facilities under
13 AS 41.21.960, or littering citations issued under AS 46.06.080.

14 * Sec. 17. TRANSITION: REGULATIONS. The Department of Natural Resources and
15 Department of Administration may immediately proceed to adopt regulations to implement
16 their respective provisions of this Act. The regulations take effect under AS 44.62
17 (Administrative Procedure Act), but not before the effective date of secs. 1 - 16 of this Act.

18 * Sec. 18. Section 17 of this Act takes effect immediately under AS 01.10.070(c).

March 30, 1999

ALASKA BOATING ASSOCIATION TESTIMONY
CSHB108, ALASKA BOATING SAFETY ACT
HOUSE TRANSPORTATION COMMITTEE
CLIFF JUDKINS, PRESIDENT

Melinda
[Signature]

REPRESENTATIVE MASEK, REPRESENTATIVE HUDSON-MEMBERS OF THE HOUSE TRANSPORTATION COMMITTEE-- MY NAME IS CLIFF JUDKINS-- I AM SPEAKING TODAY AS A THIRTY SIX YEAR BOATING RESIDENT OF THE STATE OF ALASKA AND AS THE PRESIDENT OF THE ALASKA BOATING ASSOCIATION--THANK YOU FOR THE OPPORTUNITY TO COMMENT ON THE COMMITTEE SUBSTITUTE FOR HB 108. LAST FALL THE ALASKA BOATING ASSOCIATION WAS APPROACHED BY DEPARTMENT OF NATURAL RESOURCES STAFF AND ASKED TO ENDORSE THE DEVELOPMENT OF AN ALASKA BOATING SAFETY ACT WITHIN THE DNR. FOLLOWING MUCH DISCUSSION, --- THE BOATING ASSOCIATION BOARD OF DIRECTORS, ADOPTED A RESOLUTION SUPPORTING THE DEVELOPMENT OF LEGISLATION ESTABLISHING A RECREATIONAL BOATING SAFETY ACT FOR THE STATE OF ALASKA.

AS MANY LEGISLATORS ARE AWARE, MOTORIZED RECREATIONERS, INCLUDING BOATERS HAVE NOT FARED WELL IN PAST DEALINGS WITH THE DEPARTMENT OF NATURAL RESOURCES. WE ENTERED INTO DISCUSSIONS WITH DNR CAUTIOUSLY AND WITH CONSIDERABLE APPREHENSION-- CONCERNED THAT DNR WOULD DESIGN THE ACT TO FURTHER ITS NON-MOTORIZED AGENDA OR TO ACQUIRE MORE MONIES TO USE AGAINST US. IN THAT SUSPICIOUS LIGHT I HAVE REVIEWED AND COMMENTED ON HB 108 AS THE WORKING DRAFT WAS DEVELOPED. WITH THE ABLE AND PATIENT ASSISTANCE OF YOUR STAFFS --AND

COOPERATION FROM THE DNR- CHANGES HAVE BEEN MADE THAT SATISFY OUR CONCERNS. AS NOW WORDED 75% OF FEDERAL FUNDS GENERATED AS A RESULT OF THE ACT MUST BE USED FOR A STATEWIDE BOATING SAFETY AND EDUCATION PROGRAM. -- NON-MOTORIZED CRAFT MUST BE REGISTERED AND PAY THEIR FAIR SHARE. THE BOATING SAFETY COUNCIL IS WEIGHED IN FAVOR OF POWER BOAT INTERESTS AND HAS THE POWER TO OVERRIDE DNR BOATING SAFETY REGS. THE BILL, SPECIFICALLY, EXCLUDES THE AUTHORITY TO PROHIBIT A USE OF OR ACCESS TO WATERS OF THE STATE BY A PERSON OR USER GROUP. MANY OF THE OLD WARRIERS IN MY ASSOCIATION STILL HAVE SERIOUS RESERVATIONS CONCERNING ANY PROGRAM ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES. HOWEVER THE ALASKA BOATING ASSOCIATION AS A WHOLE AND BY BOARD ENDORESMENT SUPPORTS THE LEGISLATION AS AMENDED AND WE URGE YOU TO VOTE IN FAVOR OF IT. THE MONIES TO SUPPORT THIS PROGRAM ARE PRESENTLY BEING SPENT BY ALASKANS IN ALASKA AS REGISTRATION FEES AND BOAT FUEL TAX. THESE FUNDS GO TO THE FEDERAL GOVERNMENT TO BE DISTRIBUTED TO OTHER STATES TO FUND THEIR BOATING SAFETY PROGRAMS.--ADOPTION OF THIS LEGISLATION WILL BRING THESE MONIES HOME. REGISTRATION FEES AND FUEL TAX ARE ESTIMATED TO GENERATE IN EXCESS OF ONE MILLION DOLLARS PER YEAR. I AM SURE THAT YOU HAVE ALL HEARD THAT THERE WERE 38 RECREATIONAL BOATING DROWNING INCIDENTS IN ALASKA IN 1998, 10 TIMES THE NATIONAL AVERAGE PER REGISTERED BOAT --IF ONLY HALF OUR BOATS ARE REGISTERED WE ARE STILL FIVE TIMES THE NATIONAL AVERAGE. OF THESE THIRTY EIGHT VICTIMS ELEVEN WERE FOUND WITHOUT LIFE JACKETS--EIGHTEEN WERE NOT

FOUND PROBABLY BECAUSE THEY WERE NOT WEARING LIFE JACKETS. ALCOHOL WAS FOUND TO BE INVOLVED IN TWENTY OF THE DROWNINGS, TEN INVOLVED NON-MOTORIZED CRAFT NINE OF THESE WERE CANOES -- THE REST INVOLVED SMALL BOATS AND OPEN SKIFFS. THESE STATISTICS ARE FOUND IN COAST GUARD RECORDS. IF WE DID NOTHING MORE THAN CONVINCING CONDOERS AND FAMILIES GOING HOME WITH THEIR GROCERIES TO PUT ON LIFE JACKETS WE COULD SAVE LIVES. AGAIN THE ALASKA BOATING ASSOCIATION IS HAPPY TO SUPPORT THE PASSAGE OF CSHB108 AND SAFE BOATING FOR ALL ALASKANS.

THANK YOU,


CLIVE JUDKINS, PRESIDENT
ALASKA BOATING ASSOCIATION

1-LS0445AS
Ford
4/7/99

4/8

CS FOR HOUSE BILL NO. 108()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Halcro, Phillips, Kerttula

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the use, operation, and regulation of boats; establishing a
2 uniform state waterway marking system; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. INTENT. It is the intent of the legislature that at least 75 percent of any
5 federal funds generated as a result of this Act be used to fund a statewide boating safety and
6 education program, and that the state program operate in conjunction with the United States
7 Coast Guard Auxiliary boating safety program and other marine education organizations.

8 * Sec. 2. AS 05.25.010 is repealed and reenacted to read:

9 Sec. 05.25.010. Safety requirements. (a) Except as otherwise provided by
10 law, a boat placed on the water of the state

11 (1) must be equipped with and use the sound producing devices and
12 visual distress signals of the same number, type, and specifications as required by the
13 United States Coast Guard;

14 (2) that is equipped with a gasoline engine for electrical generation,

1 mechanical power, or mechanical propulsion must also be equipped with the
2 ventilation systems and backfire flame control devices of the same type and
3 specifications as required by the United States Coast Guard; and

4 (3) that is equipped with an engine for electrical generation, mechanical
5 power, or mechanical propulsion must also be equipped with the fire extinguishers of
6 the same number, type, and specifications as required by the United States Coast
7 Guard.

8 (b) The provisions of (a) of this section apply regardless of whether the boat
9 is placed or operated on water of the state subject to federal jurisdiction.

10 (c) During the period of time extending from sunset to sunrise and during
11 periods of restricted visibility, a boat placed on water of the state must display lights
12 of the same number, type, and specifications as required by the United States Coast
13 Guard under 33 U.S.C. 1602 and 33 U.S.C. 2002.

14 (d) A boat on water of the state must carry one United States Coast Guard
15 approved Type I, Type II, or Type III personal flotation device in serviceable condition
16 for each person on board the boat. A Type V personal flotation device may be carried
17 in lieu of a personal flotation device required in this subsection if the Type V personal
18 flotation device is in serviceable condition and

19 (1) if the approval label on the Type V personal flotation device
20 indicates that the device is approved for the activity in which the boat is being used,
21 or that the device is approved as a substitute for a personal flotation device of the type
22 required on the boat; and

23 (2) for a device that contains a reference to an owner's manual, if the
24 Type V personal flotation device is used in accordance with the requirements in the
25 owner's manual.

26 (e) In addition to the requirements in (d) of this section, a boat that is 16 feet
27 or longer, other than a kayak or canoe, must carry one Type IV personal flotation
28 device that can be thrown and that is approved by the United States Coast Guard.

29 (f) A person may not use a flashing or revolving red or blue emergency light
30 on a boat unless the boat is operated by a peace officer or emergency professional in
31 the performance of official duties.

1 (g) The operator of a boat on water of the state may not transport a person
2 under 13 years of age on the deck of a boat or in an open boat unless the person is
3 wearing a United States Coast Guard approved Type I, Type II, or Type III personal
4 flotation device. A Type V personal flotation device may be worn in lieu of a
5 personal flotation device required in this subsection if the Type V personal flotation
6 device is in serviceable condition and

7 (1) if the approval label on the Type V personal flotation device
8 indicates that the device is approved for the activity in which the boat is being used,
9 or that the device is approved as a substitute for a personal flotation device of the type
10 required on the boat; and

11 (2) for a device that contains a reference to an owner's manual, if the
12 Type V personal flotation device is used in accordance with the requirements in the
13 owner's manual.

14 (h) The department may require, by regulation, that a boat or class of boats
15 carry additional equipment that is necessary for the safety of persons and property.

16 * Sec. 3. AS 05.25.020 is amended to read:

17 **Sec. 05.25.020. Use of boat with water [WATER] skis and surfboards.** (a)

18 A person may not operate a boat [WATERCRAFT] on water [THE INLAND
19 WATERS] of the [THIS] state for towing a person on water skis, [OR] a surfboard,
20 or a similar device [DEVICES] unless

21 (1) the boat [WATERCRAFT] is equipped with a rearview mirror in
22 which the person being towed can be viewed; [,] or

23 (2) there is₂ in the boat, [WATERCRAFT] a person of 12 years of age
24 or older in addition to the operator [,] in a position to observe the progress of the
25 person being towed.

26 (b) A person may not operate a boat [WATERCRAFT] on [THE] water of the
27 state to tow a person under 13 years of age on water skis, a surfboard, or a similar
28 device unless the person being towed is wearing a United States Coast Guard approved

29 (1) Type I, Type II, or Type III personal flotation device; or

30 (2) Type V personal flotation device if the Type V personal
31 flotation device is in serviceable condition and

1 (A) if the approval label on the Type V personal flotation
2 device indicates that the device is approved for the activity;

3 (B) for a device that contains a reference to an owner's
4 manual, if the Type V personal flotation device is used in accordance with
5 the requirements in the owner's manual [. IN THIS SUBSECTION,
6 "PERSONAL FLOTATION DEVICE" DOES NOT INCLUDE A LIFE BELT
7 OR LIFE RING].

8 * Sec. 4. AS 05.25.030 is repealed and reenacted to read:

9 **Sec. 05.25.030. Boat collisions, accidents, and casualties.** (a) The operator
10 of a boat involved in a collision, accident, or casualty shall

11 (1) render assistance as is practicable and necessary to save other
12 persons from danger or to minimize the danger to other persons to the extent that the
13 operator can do so without serious danger to the operator's boat, crew, and passengers;
14 and

15 (2) give the operator's name, address, and identification number of the
16 operator's boat in writing to each person injured in the collision, accident, or casualty
17 and to the owner of property damaged in the collision, accident, or casualty.

18 (b) For the purpose of gathering boating accident statistics, the operator of a
19 boat involved in a collision, accident, or casualty that results in death or injury to a
20 person, or damage to property in excess of \$500 for each incident, shall file a report
21 with the department on or before the 20th day after the incident. The department shall
22 prepare a form for the report and make the form available to other agencies and to the
23 public.

24 (c) In response to a request from an authorized official or agency of the United
25 States, a law enforcement agency, or in compliance with United States Coast Guard
26 regulations, the department shall provide statistical information compiled or otherwise
27 available to the department from the reports required under (b) of this section.

28 * Sec. 5. AS 05.25.040 is amended to read:

29 **Sec. 05.25.040. Owner's civil liability.** The owner of a boat
30 [WATERCRAFT] is liable for injury or damage caused by the negligent operation of
31 the owner's boat [WATERCRAFT] whether the negligence consists of a violation of

1 a state statute [,] or the failure [NEGLECTING] to exercise [OBSERVE] ordinary
2 care in the operation of the boat [WATERCRAFT] as the rules of the common law
3 require. The owner is not liable, however, unless the boat [WATERCRAFT] is used
4 with the owner's express or implied consent. It is presumed that the boat
5 [WATERCRAFT] is being operated with the knowledge and consent of the owner [,]
6 if, at the time of the injury or damage, it is under the control of the owner's spouse,
7 father, mother, brother, sister, son, daughter, or other member of the owner's immediate
8 family. This chapter does not relieve any other person from a liability that the person
9 would otherwise incur [,] and does not authorize or permit recovery in excess of injury
10 or damage actually incurred.

11 * **Sec. 6.** AS 05.25.050 is amended to read:

12 **Sec. 05.25.050. Declaration of policy.** It is the policy of the [THIS] state to
13 promote safety for persons and property in and connected with the use, operation, and
14 equipment of boats on water of the state [VESSELS IN RECREATIONAL
15 PURSUITS IN INLAND WATERS] and to promote uniformity of laws relating to
16 boat safety [THERETO].

17 * **Sec. 7.** AS 05.25 is amended by adding new sections to read:

18 **Sec. 05.25.052. Uniform state waterway marking system.** The department
19 shall develop and adopt regulations establishing a uniform state waterway marking
20 system for the placement of regulatory markers. The regulations must be compatible
21 with the system of aids to navigation prescribed by the United States Coast Guard.

22 **Sec. 05.25.053. Boating safety program.** (a) The department shall administer
23 a statewide boating safety program. The program must, to the extent consistent with
24 state law,

25 (1) secure the full benefits available to the state under 46 U.S.C. 13101
26 - 13110 (Federal Boat Safety Act of 1971); and

27 (2) take additional actions necessary to gain initial and ongoing federal
28 acceptance of the boating safety program and to qualify and apply for federal money
29 under 46 U.S.C. 13102.

30 (b) The department shall cooperate with local, state, and federal agencies,
31 private and public organizations, and individuals to provide for

- 1 (1) education on boating safety;
- 2 (2) a boat registration and numbering system through the Department
- 3 of Administration;
- 4 (3) a boating collisions, accidents, and casualties reporting system;
- 5 (4) boating access;
- 6 (5) boating safety patrol and law enforcement activity;
- 7 (6) a uniform state waterway marking system; and
- 8 (7) a boating safety advisory council as described in AS 05.25.057.

9 **Sec. 05.25.055. Registration and numbering of boats.** (a) An
10 undocumented boat placed on water of the state must be registered and numbered as
11 required by this chapter. The Department of Administration shall adopt by regulation
12 a boat registration and numbering system that is consistent with the national standard
13 for state numbering systems established by the United States Coast Guard.

14 (b) In adopting a boat registration system under (a) of this section, the
15 Department of Administration shall authorize agents, including boat dealers, to register
16 boats.

17 (c) A boat dealer shall require a purchaser of a new or used boat sold at retail
18 to complete a registration application and pay the registration fee before the boat
19 leaves the dealer's premises unless the boat is exempt from registration and numbering
20 under this chapter or regulations adopted under this chapter.

21 (d) A person may not operate a boat on water of the state unless a valid
22 certificate of number has been awarded by the Department of Administration to the
23 boat and the identification number and any required validation decals are properly
24 displayed on the boat.

25 (e) The Department of Administration shall authorize agents to accept an
26 application and registration fee for registration, to issue a registration, and to forward
27 the application and registration fee to the Department of Administration.

28 (f) Unless otherwise provided by this chapter, or unless the owner has been
29 awarded a current, valid Alaska certificate of number from the United States Coast
30 Guard, the owner of a boat for which a current certificate of number has been awarded
31 under federal law or a federally approved numbering system of another state shall

1 apply for a certificate of number in this state as required by this chapter if the boat is
2 operated on water of the state for more than 90 consecutive days. If a boat has an
3 existing number, the owner may request that the department issue the same number for
4 purposes of this section, and the department shall comply with the request unless
5 compliance would result in a duplication of numbers.

6 (g) A certificate of number issued under this chapter is valid for three years
7 unless terminated or discontinued earlier as required by this chapter and regulations
8 adopted under this chapter. The certificate expires on the last day of the month at the
9 end of the three-year period. The expiration date shall be indicated on the certificate.

10 (h) All records of ownership of boats that are kept by the Department of
11 Administration under this section are public records. The Department of
12 Administration shall provide records of ownership to the Department of Natural
13 Resources for the purposes of meeting the federal requirements for state programs and
14 implementing this chapter.

15 (i) The following boats are exempt from the numbering and registration
16 provisions of this section:

17 (1) a boat that is operated in this state for a period not exceeding 90
18 consecutive days and that has a current, valid certificate of number issued by another
19 state having a federally approved numbering system;

20 (2) a foreign boat operated in water of the state for a period not
21 exceeding 90 consecutive days;

22 (3) a boat owned by the United States or an entity or political
23 subdivision of the United States, or a boat owned by a state or an entity or political
24 subdivision of a state;

25 (4) a boat that is not equipped with mechanical propulsion, that is
26 exclusively paddled, poled, rowed, or powered by wind, and that is under 10 feet in
27 length;

28 (5) a boat with a valid document to operate the boat that is issued by
29 the United States or a foreign government.

30 **Sec. 05.25.057. Alaska Boating Safety Council established.** (a) The Alaska
31 Boating Safety Council is established in the department.

1 (b) The council consists of seven members appointed by the governor. The
2 governor shall appoint each member on the basis of interest in public affairs,
3 knowledge of boating issues as they relate to both safety and water of the state, and
4 good judgment and ability concerning boating safety. At least four members of the
5 council shall represent powerboat interests. The appointed members shall be residents
6 of the state and shall be appointed without regard to political affiliation or geographical
7 location of residence. The commissioner is not a member of the council, but shall be
8 ex officio secretary.

9 (c) The council may not meet more than two times in each calendar year.
10 Members of the council receive no compensation for services on the council, but are
11 entitled to per diem and travel expenses authorized for boards under AS 39.20.180.

12 (d) In this section, "council" means the Alaska Boating Safety Council.

13 * **Sec. 8.** AS 05.25.060 is repealed and reenacted to read:

14 **Sec. 05.25.060. Prohibited operation.** A person may not operate a boat on
15 water of the state

16 (1) for a recreational purpose or another purpose, or tow water skis, a
17 surfboard, or a similar device, in a reckless or negligent manner so as to endanger the
18 life or property of another person;

19 (2) that is not equipped as required under this chapter and regulations
20 adopted under this chapter; or

21 (3) in a manner that is inconsistent with a regulatory marker authorized
22 under regulations adopted by the department under this chapter.

23 * **Sec. 9.** AS 05.25.070 is amended to read:

24 **Sec. 05.25.070. Exemptions.** Boats [WATERCRAFT] and persons operating
25 boats [WATERCRAFT] are exempt from this chapter [, EXCEPT AS 05.25.060(b),]
26 when participating in the area set aside for a public regatta, race, marine parade,
27 tournament, or exhibition on inland water; for purposes of this section, "inland
28 water" means water of the state that is not offshore water [WATERS].

29 * **Sec. 10.** AS 05.25.080 is repealed and reenacted to read:

30 **Sec. 05.25.080. Enforcement.** A peace officer may enforce this chapter and
31 regulations adopted under this chapter and in the exercise of enforcement may stop and

1 board a boat subject to this chapter. A peace officer may issue a citation as provided
2 in AS 12.25.180 to a person who violates a provision of this chapter.

3 * **Sec. 11.** AS 05.25.090 is repealed and reenacted to read:

4 **Sec. 05.25.090. Penalties.** (a) Except as provided in (b) of this section, a
5 person who violates a provision of this chapter or regulations adopted under this
6 chapter is guilty of a class A misdemeanor.

7 (b) A person who violates AS 05.25.010, 05.25.020, 05.25.055, 05.25.060(2)
8 or (3), or a regulation adopted under this chapter relating to AS 05.25.010 or 05.25.020
9 is guilty of a violation as defined in AS 11.81.900 and may be fined up to \$500. The
10 supreme court shall establish by order or rule a schedule of bail amounts for violations
11 under this subsection that allow the disposition of a citation without a court
12 appearance.

13 * **Sec. 12.** AS 05.25 is amended by adding a new section to read:

14 **Sec. 05.25.095. Regulations.** (a) Except as provided in (c) - (e) of this
15 section, the department may adopt regulations to implement this chapter, including
16 regulations regarding

17 (1) boat and associated safety equipment requirements, including
18 additional equipment as described in AS 05.25.010;

19 (2) uniform waterway markers;

20 (3) boat operation and safety requirements; and

21 (4) requirements for certification of programs on boating safety
22 education.

23 (b) In consultation with the department, the Department of Administration may
24 adopt regulations to implement this chapter with respect to the numbering, marking,
25 and titling of undocumented boats.

26 (c) Regulations adopted under this chapter may not be less stringent than
27 applicable minimum requirements of regulations governing recreational boat safety of
28 the United States Coast Guard.

29 (d) The department may not adopt a regulation under this section regarding
30 boating safety if, before or during the period for public comment on the proposed
31 regulation provided by AS 44.62.190, the Alaska Boating Safety Council provides the

1 department with a written objection regarding the regulation, unless the department
2 modifies the proposed regulation to satisfy the objection. The prohibition of this
3 subsection does not apply if modification of the proposed regulation to satisfy the
4 council's objection would result in

5 (1) failure to meet a federal stringency requirement described under (c)
6 of this section; or

7 (2) a regulation that is not consistent with another provision of law.

8 (e) Nothing in this section authorizes the department to prohibit a use of or
9 access to the water of the state by a person or user group.

10 * **Sec. 13.** AS 05.25 is amended by adding a new section to read:

11 **Sec. 05.25.096. Fees.** (a) The Department of Administration shall assess the
12 following fees:

13 (1) motorized boat registration, registration renewal, and transfer of
14 registration, \$24 for a three-year period;

15 (2) nonmotorized boat registration, registration renewal, and transfer of
16 registration, \$10 for a three-year period;

17 (3) replacement of lost registration, \$5;

18 (4) replacement of lost registration validation decals, \$5.

19 (b) The Department of Administration shall separately account for fees
20 collected under (a) of this section for boat registration that are deposited in the general
21 fund. The annual estimated balance in that account may be used by the legislature to
22 make appropriations to the department and the Department of Administration to carry
23 out the purposes of this chapter.

24 * **Sec. 14.** AS 05.25.100 is repealed and reenacted to read:

25 **Sec. 05.25.100. Definitions.** In this chapter, unless the context requires
26 otherwise,

27 (1) "aids to navigation" means buoys, beacons, or other fixed objects
28 in the water that are used to mark obstructions to navigation or to direct navigation
29 through safe channels;

30 (2) "boat" means watercraft used or capable of being used as a means
31 of transportation on water, except for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(A) a ship's lifeboat;

(B) a seaplane;

(C) an inspected passenger vessel; and

(D) a single air mattress, single inner tube, or other water toy;

(3) "boat dealer" means a person engaged wholly or in part in the business of selling or offering for sale, buying or taking in trade for the purpose of resale, or exchanging, displaying, demonstrating, or offering for sale three or more boats within 12 consecutive months and who receives or expects to receive money, profit, or any other thing of value;

(4) "certificate of number" means the document bearing the identification number issued to a boat by the Department of Administration under this chapter, by a federal agency, or by the state of principal use under a federally approved numbering system;

(5) "commissioner" means the commissioner of natural resources;

(6) "department" means the Department of Natural Resources;

(7) "operate" means to navigate or to be in actual physical control of a boat used or capable of being used as a means of transportation on water of the state;

(8) "owner" means a person who has a property interest other than a security interest in a boat and the right of use or possession of the boat; "owner" does not include a lessee unless the lease is intended as security;

(9) "ownership" means a property interest other than a security interest;

(10) "passenger" means a person on board a boat who is not the master, operator, crew member, or other person engaged in a capacity in the business of the boat;

(11) "regulatory marker" means an anchored or fixed marker in or on the water, or sign on the shore or on a bridge over the water, other than aids to navigation; "regulatory marker" includes swimming markers, bathing markers, speed zone markers, identification markers, danger zone markers, boat keep out areas, special anchorage areas, and mooring buoys;

(12) "serviceable condition" as applied to personal flotation devices means

1 (A) metal or plastic hardware is not broken, deformed, or
2 weakened by corrosion;

3 (B) webbings or straps are not ripped, torn, or separated from
4 an attachment point;

5 (C) there are no rotted or deteriorated structural components that
6 fail when tugged;

7 (D) there are no rips, tears, or open seams in fabric or coatings
8 that are large enough to allow the loss of buoyant material;

9 (E) buoyant material has not become hardened, nonresilient,
10 permanently compressed, waterlogged, or oil-soaked, and does not show
11 evidence of fungus or mildew;

12 (F) there is no loss of buoyant material or evidence of buoyant
13 material that is not securely held in position;

14 (G) there is a properly armed inflation mechanism, complete
15 with a full inflation medium cartridge and all status indicators showing that the
16 inflation mechanism is properly armed, unless the PFD is worn inflated;

17 (H) inflatable chambers are all capable of holding air;

18 (I) oral inflation tubes are not blocked, detached, or broken;

19 (J) the manual inflation lanyard or lever is not inaccessible,
20 broken, or missing;

21 (K) inflator status indicators are not broken or otherwise non-
22 functional;

23 (13) "undocumented boat" means a boat that does not possess a valid
24 certificate of documentation issued by the United States Coast Guard under 46 U.S.C.
25 12101 - 12123;

26 (14) "validation decal" means a decal that has the state of registration
27 and registration expiration year clearly marked;

28 (15) "water of the state" has the meaning given in the term "navigable
29 water" in AS 38.05.965; "water of the state" also includes the marginal sea adjacent
30 to the state and the high seas within the territorial limits of the state, irrespective of
31 the ownership of the land underlying those waters.

1 * **Sec. 15.** AS 09.25.120(a) is amended by adding a new paragraph to read:

2 (9) reports submitted under AS 05.25.030 concerning certain collisions,
3 accidents, or other casualties involving boats.

4 * **Sec. 16.** AS 12.25.190(c) is amended to read:

5 (c) The person cited for the crime shall give a written promise to appear in
6 court by signing at least one copy of the written citation prepared by the peace officer,
7 and the officer shall deliver a copy of the citation to the person. The written promise
8 requirement of this subsection does not apply to boating citations for which a bail
9 schedule has been established under AS 05.25.090(b), motor vehicle and traffic
10 citations for which a bail or fine schedule has been established under AS 28.05.151,
11 fish and game citations for which a bail schedule has been established under
12 AS 16.05.165, citations issued under AS 04.21.065, citations issued under
13 AS 18.35.341, citations issued in state park and recreational facilities under
14 AS 41.21.960, or littering citations issued under AS 46.06.080.

15 * **Sec. 17.** TRANSITION: REGULATIONS. The Department of Natural Resources and
16 Department of Administration may immediately proceed to adopt regulations to implement
17 their respective provisions of this Act. The regulations take effect under AS 44.62
18 (Administrative Procedure Act), but not before the effective date of secs. 1 - 16 of this Act.

19 * **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature



Representative Bill Hudson

State Capitol
Juneau, Alaska
99801-1182
Phone: (907) 465-3744
Fax: (907) 465-2273

Committees:
Chair
Fisheries
Utilities Restructuring
Member
Transportation
State Affairs

MEMORANDUM

TO: Representative Pete Kott, Chair
House Judiciary Committee
FROM: Representative Bill Hudson
SUBJECT: Hearing Request, HB 108
DATE: March 25, 1999

I respectfully request that you schedule a hearing for HB 108, An Act relating to Boating Safety, before your committee on March 31, pending referral. HB 108 is listed on the priority bill list and time is of the essence in moving this legislation through.

In 1998, 38 Alaskans lost their lives in boating accidents, and Alaska continues to experience boating fatalities at nearly ten times the national rate. Current boating safety programs are a combination of Coast Guard, State of Alaska, and private and public efforts, which are not centrally located or coordinated.

HB 108, if enacted, would establish an approved State Boating Safety Program. This program would provide for the state to assume from the federal government vessel registration responsibilities and regulatory authority over the carriage of boat safety equipment. HB 108 would comply with The Federal Safe Boating Act of 1971. Alaska is the only state in the nation that does not have an approved Boating Safety Program, and the only state that has federal management of boating safety laws. Because Alaska does not comply with the Federal Safe Boating Act, our State's share of the federal marine fuel taxes that Alaskans pay has not been redistributed back to Alaska. Passage of HB 108 will assure we are included in the redistribution of these taxes, bringing hundred's of thousands of federal dollars back to the State.

Additionally, passage of HB 108 will assure that the State manages and controls it's boating safety laws and programs.

Thank you for your consideration.

Safe boating?

Juneau one step closer to goal

When state lawmakers debate whether to adopt a safe-boating law this session, let them look back to 1998, when 38 boaters drowned in Alaska waters. That rate translates to over 100 deaths per 100,000 registered boats. Elsewhere in the nation, noncommercial boaters are drowning at rates of seven per 100,000.

The high number of drowning deaths in Alaska is unacceptable and a state disgrace.

Now, legislators have a real chance to reduce the deaths — at little or no cost to the state. That chance comes via two bills that were introduced this week in the Alaska Legislature. With their proposals on the table, Rep. Bill Hudson and Gov. Tony Knowles are among those leading the charge for safer waterways.

Good for them.

A state safe-boating law is required by the Federal Boat Safety Act of 1971, which transferred responsibility for boater education, prevention and enforcement to the states. The immediate incentive for states to adopt a law was boater-fuel tax money that they split after it was collected by the feds.

Since then, adoption of safe-boating laws across the nation have had their intended consequence: a reduction in boating deaths and injuries. Before the 1971 act was passed, national drowning rates were running at 32 deaths per 100,000 registered boats.

The dramatic decrease in drownings elsewhere in the nation, says U.S. Coast Guard boating safety specialist Sue Hargis, "shows how much this money is needed in Alaska to help address the problems."

Rep. Hudson says two conditions spurred him to sponsor legislation. First, his desire for an administration that would strongly back the law was met in Gov. Knowles. He feels his second condition, that there would be enough federal money not only to run the program but expand boating safety to "smaller and more Interior reaches of Alaska," also has been addressed by the state and Coast Guard. Alaska now stands to gain up to \$600,000.

Some critics of a safe-boating law mistakenly think it will immediately mean more government regulation. The Juneau Republican is very much aware of the anti-government sentiment that runs deep in Alaska. His measure wouldn't have the state add laws that don't exist on the federal level.

To its credit, the U.S. Coast Guard has already agreed with the state that it will continue its limited, but effective, boating safety operations if a state law is passed. At the same time, it will defer program management to the state, as it should.

With this deal, Alaskans will come out winners.

But first things first: The Alaska Legislature needs to pass a long-overdue safe-boating law. To do less is to go home and sit back as more people drown.

ALASKA MUNICIPAL LEAGUE RESOLUTION

Revenue and Finance

1997 Policy Statement

harbor facilities to a reasonable standard prior to transfer to municipalities. Thereafter, the funds will be distributed in the form of grants to maintain harbors statewide with special emphasis on harbor facilities that do not receive substantial marine fuel tax revenues.

b. Motor Vehicle Fuel Tax: The League supports the increase of the motor vehicle fuel tax to a rate not higher than the national average of \$.22 per gallon to fund state and municipal highway and road operation, maintenance, and improvements. Such legislation should authorize payment of that increase to the municipality where the fuel was sold or by an equitable formula based on actual maintenance costs and maintenance needs of state and local roads.

6. State Fisheries Business and Fisheries Landing Taxes: The League supports the continued funding of the statutory 50-50 sharing of the State Fisheries Business and Fisheries Landing Tax revenues between the state and municipalities. The League urges the state to strengthen its enforcement and collection efforts in this program. (am 11/95) The state is urged to take over the management of the licensing of documented and personal vessels.

7. Matching Grants: If a state program requires municipal match to receive funds, the matching requirement should be imposed on all grantees, and not just municipalities (in that program).

C. STABILIZATION OF MUNICIPAL REVENUE SHARING

1. Consolidation of the Municipal Assistance and State Revenue Sharing Programs: The League supports a consolidation of the two current Municipal Assistance and State Revenue Sharing programs into one that provides long-term stability for revenue sharing and considers population, local resources (assessed value), and local effort in providing municipal basic services (such as police, road maintenance, and education). The municipal revenue sharing distribution philosophy is to provide a portion of the wealth from Alaska's commonly owned resources (oil revenue) to ensure a basic level of public services to all Alaskans. The new program should include a minimum level of funding for a municipality adequate to support a basic level of public services. The revenue sharing payment should be made on July 1.

Most important, the League supports a stable revenue relationship for municipalities with the state to promote local fiscal planning and to promote local economic and community development.

Post-It® Fax Note	7671	Date	12-16	# of pages	1
To	SHE HARRIS	From	AL Municipal League		
Co/Dop	Count Line 1	Co.	See last sentence		
Phone #		Phone #	77 paragraph 6		
Fax #	463-22-99	Fax #	01		

Safe boating

Legislators: Golden chance to act

Even as lawmakers scramble to get a grip on a projected \$1 billion deficit, they must evaluate unrelated legislation and new ideas that will make Alaska a better place. A comprehensive safe-boating law is one measure that should pass this session.

Actually, it's past time for such a law.

Alaska's ranking as the state with the nation's highest drowning rate is reason enough for 60 legislators to sit up and take notice. It is no coincidence that Alaska is the only state that lacks a comprehensive safe-boating law.

In 1998, 38 Alaskans drowned while engaged in noncommercial boating. The previous year, 23 people died.

A 1971 federal law designed to encourage states to create boater-safety programs comes with a sweetener: Federal boater-fuel tax dollars are distributed to states that have adopted comprehensive safe-boating laws.

This means that if Alaska passes a law, the bulk of safe-boating money that the state spends on education, prevention and enforcement efforts can come from federal coffers. This kind of state-friendly arrangement helps offset declining oil dollars that will raise the bar for new state-funded programs.

To coax Alaska along, the U.S. Coast Guard has agreed to free up just more than \$300,000 for safe-boating initiatives. The administration of Gov. Tony Knowles was able to squeeze this money out of the feds because it was able to persuade them that Alaska is coming along on this issue. While the governor is said to be weighing introduction of a safe-boating law to get the subject on the table, the Legislature holds the key. If lawmakers don't act in a timely manner, the federal dollars can be yanked and Alaska will be back where it started.

Lawmakers who want to learn more about safe boating can turn to two handy aids.

First, the newly created state Office of Boating Safety has produced Alaska's first state boating handbook. The booklet covers boat registration, equipment requirements and waterway rules. It reads and looks much like the state's manual for automobile drivers.

Second, the National Association of State Boating Law Administrators has issued a magazine-style publication called "Boating Safety Dollars at Work." The handout explains how state and U.S. Coast Guard partnerships have improved recreational boating safety across the nation. In recent years, it notes, boating fatalities were reduced nearly 12 percent.

Alaska's unacceptably high rates of recreational drowning will begin to go down after legislators do their part and pass a comprehensive safe-boating law. Make no mistake: There is a link between safe-boating laws and reduced drowning deaths.

Alaska should be part of this national trend to make waterways safer.

ANCHORAGE DAILY NEWS 1/26/99

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 108

Revision Date: _____
Title: Use, Registration and Regulation of Boats.....
Sponsor: Representative Hudson
Requestor: (H) TRA

Department Affected: Administration
BRU: Motor Vehicles
Component: _____
COMPONENT SERIAL NO. 2348

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	170.7	160.1	137.6	137.6	137.6	137.6
TRAVEL						
CONTRACTUAL	80.5	49.0	49.0	49.0	49.0	49.0
SUPPLIES						
EQUIPMENT	50.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	301.2	209.1	186.6	186.6	186.6	186.6

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	300.0	600.0	600.0	600.0	600.0	600.0
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	301.2	209.1	186.6	186.6	186.6	186.6
1037 GF/Mental Health						
OTHER						
TOTAL	301.2	209.1	186.6	186.6	186.6	186.6

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY	2	2				

ANALYSIS: (Attach a separate page if necessary.)

The analysis will assume that the program will start on January 1, 2000. The positions that will be needed to administer the program will be hired on October 1, 1999, to allow time for training and establishing the program. Costs shown for FY 00 will only reflect partial year costs for 9 months of personal services costs and 6 months of registration activity.

(Continued on attached sheet)

Prepared by: Charles R. Hosack
Division: Motor Vehicles

Phone: 269-5559
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 3/25/99

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

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO: HB 108

Revision Date: _____ Dept. Affected: Administration

ANALYSIS CONTINUED:
Discussions and Assumptions

The Coast Guard currently requires registration of boats used on navigable waterways and has approximately 33,000 registered boats. Assuming that an equal number of registrations expire in each year, this results in a registration workload of 11,000 boats per year. To process this workload the Coast Guard has 1.5 positions (1 dedicated full time and 1 which assists in administration and during the peak season) and has requested an additional full time position to prevent backlogs. These registrations are maintained on a stand alone computer system using specially developed software known as SABRE (State of Alaska Boat Registration). This system is a windows based system that is not networked or available to other users.

Under the proposed law all powered boats would be registered by DMV not just those on navigable waterways. Increased enforcement by law enforcement agencies and Division of Parks would increase the number of registered boats. There is no accurate number of the total number of boats in the state however estimates from the various sources place the number between 50,000 to 100,000. This is mainly based on boat sales of 10,000 per year. For purpose of this fiscal note it is assumed that there will be 75,000 registered boats. The registration period will be three years resulting in an annual registration workload of 25,000 boat registrations.

The Coast Guard has offered to give the SABRE registration system to the state however there are problems with using it. The rationale for having DMV register boats is the fact that there are offices located throughout the state and there is an information system available to these offices, to law enforcement, and to other agencies as required. The DMV system has an integrated accounting module to properly account for state revenues. The SABRE system is not compatible with the current DMV system and would require extensive modification to make it so. It would be more cost effective and efficient to create a new application on the DMV system by modifying the vehicle registration system to accommodate boat registration.

Initial Start-up Costs

During the first year there will be additional costs to modify the DMV information system for the boat registration program and to convert the existing boat registration data base to the DMV system. The programming needs will be done by contract programmers and the conversion of the data base will require either manual data entry or manual verification of each entry due to the differences between the two operating systems. The data entry will be done by non-perm project employees. These costs will be incurred in the first calendar of the program which will cross fiscal years. With an assumed start date of Jan 1, 2000, all employees will start on Oct 1, 1999, so that they can receive initial training, test the computer systems, and provide training for both the boat dealers and DMV employees

The costs associated with the start-up are as follows:

	<u>FY 00</u>	<u>FY 01</u>
2 non-perm employees MVCSR I (mg 10) for 12 months	\$67.5	\$22.5
300 hours contract programming @ \$125/hr	\$37.5	
Equipment (computer workstations)	\$20.0	
Total	\$125.0	\$22.5

These costs will be incurred only in the first year of the program.

On-going Operating Budget Costs

In addition to the initial costs to establish the system and to convert the data from the SABRE system to the DMV system, there will be the regular costs to renew registrations of boats that are expiring and to register boats as they are sold by the dealers. Dealers are required to have a customer complete an application for any boat sold at retail and then send the registration application along with the appropriate fees to DMV. Boats due for registration renewal will be incorporated into the normal renewal system the same as vehicle. This will include an initial renewal notice and the opportunity to renew by mail, by phone, by internet, or in person at any DMV office. The on-going costs will be based on an annual registration workload for 25,000 boats.

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO: HB 108

Revision Date: _____ Dept. Affected: Administration

Cost Detail

	<u>FY 00</u>	<u>FY 01+</u>
1 PFT MVCSR III (rng 14) lead worker	\$35.7	\$47.6
2 PFT MVCSR Is (rng 10)	\$67.5	\$90.0
Postage costs (postage envelopes)	\$ 6.0	\$12.0
Forms cost (applications and registrations)	\$ 4.5	\$ 4.5
Validation Decals (45,000* @ \$0.50 ea.)	\$22.5	\$22.5
Training Costs (for Boat Dealers and DMV employees)	\$10.0	\$10.0
Equipment (computer workstations)	\$30.0	
Total	\$176.2	\$186.6

Revenue

There will be 25,000 boat registrations processed each year at \$24 for the three year period generating \$600.0 in GF revenue annually.