

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 86/2

10073 SENATE JUDICIARY

# Alaska State Legislature

## Senate

Official Business

### Senate Bill 45 Sponsor Statement

**RICK  
HALFORD**

State Capitol  
Juneau, Alaska  
99801-1182  
Phone (907) 465-4958  
Fax (907) 465-4928

P.O. Box 670190  
Chugiak, Alaska 99567  
Phone (907) 694-4958  
Fax (907) 694-0549

600 E. Railroad Avenue  
Wasilla, Alaska 99654  
Phone (907) 376-4958

**"An Act relating to tort immunity for personal injuries or death occurring on land; relating to the vacation by the state or a municipality of rights-of-way acquired by the state under former 43 U.S.C. 932; and providing for an effective date."**

Senate Bill 45 expands the limited immunity granted under AS 09.65.200 to include improved land as well as unimproved land, providing that the land was entered onto for purpose of recreation and that there was no compensation paid for the access or use of the land.

This legislation comes forward in response to the desire to preserve and to expand recreational access for Alaskans, and for visitors to the State. The ability to access lands for purposes of skiing, hiking, hunting, fishing, snow-machining and numerous other outdoor recreational activities is an important aspect to enjoying the benefits of our great state. The potential for liability and litigation for private landowners who allow the public free access to their lands for recreational purposes has created pressure to further restrict entry and a disincentive to the establishment of other outdoor activity.

Promoting recreational opportunity and establishing additional trail systems has become a priority for a number of groups and organizations around the state. We have received requests and/or support for this legislation from numerous entities including: the State Division of Parks, the Municipality of Anchorage, the Anchorage Economic Development Corporation, the City of Wasilla, the Wasilla, Palmer, Fairbanks and State Chambers of Commerce, the Alaska Snowmachine Association, the Mat-Su Motor Mushers, the Alaska Boaters' Association, and the Alaska Outdoor Council.

SB 45 also makes a technical correction to the statutes governing vacation of RS 2477 rights-of-way and section line easements granted under former 43 U.S.C. 932. In addition, SB 45 provides concise direction in Title 29, the statutes pertaining to local governments, that is reflective of the procedures for easement vacation existing in Title 19.

SB 45 will assist in the effort to expand recreational opportunity for Alaskans and visitors alike. I urge your support for this legislation.

From: Mr. Howard Davis Jr.  
PO Box 395  
Clam Gulch, AK 99568  
262-5124

Bill: SB 45 Title: LAND OWNER IMMUNITY/ RT-OF-WAY VACATION

Message:

The Caribou Cabin Hoppers with a membership in excess of 250 representing in excess of 1000 individuals, supports SB45, an act relating to tort immunity for personal injury or death.

Subject: SB 45  
Date: Wed, 31 Mar 1999 07:52:36 -0900  
From: gizmo@arctic.net (Lance Stevens)  
To: "Senator Robin Taylor" <Senator\_Robin\_Taylor@legis.state.ak.us>  
CC: "Michelle Trainor" <mtt@knix.net>,  
"Senator Rick Halford" <Senator\_Rick\_Halford@legis.state.ak.us>

Dear Senator Taylor:

I am asking that you allow SB 45 to move out of committee. This is important legislation that will allow Alaska to become a state where trails are abundant and landowners who donate the easements are protected. So many of our trails currently cross private property at some point in the route that if we do not do something, long established trails could be closed due to a private land owner no longer wishing to risk is financial future in the name of public recreation.

If you have concerns on this bill I would like to help address them and look for ways to overcome them. As the legislative representative for ASSA, I would also like to express our thanks in supporting SJR 5. Keeping public lands open to the public is often under appreciated until something is taken away. We hope that you work with the supporters of SB 45 and not allow trails to be taken away from Alaskans.

Sincerely,

Lance Stevens

ASSA Legislative Rep.  
17419 Kantishna  
Eagle River, AK 99577  
907-694-1825  
gizmo@arctic.net  
District: 25-453 Party: U Sex: M

**Subject: Senate Bill 45**

**Date: Fri, 19 Feb 1999 09:55:06 -0900**

**From: "Scott Heidorn" <sheidorn@igloo.pplant.uaf.edu>**

**To: Senator Robin Taylor <Senator\_Robin\_Taylor@legis.state.ak.us>**

**CC: Senator Rick Halford@legis.state.ak.us**

Dear Senator Taylor and Senator Halford,

It is great to see SB 45 with it's improvements to existing legislation. I hope these improvements will go far enough in meeting our ultimate goal and that is to encourage private property owners to open their land to public recreation use. Over the years two important issues have come to light as different states developed trail programs.

The first major change in legislation involved the issue of compensation. Compensation can take on a variety of meanings from offering a hind quarter of deer to the farmer that allows access, to property tax relief for trail access. Other forms of compensation include trail development improvements to property which result in increased property value or the offering of a gratuity for access. A variety of reward for access have become a necessity to initiate and maintain access. If SB 45 can address this issue as outlined in the model legislation I sent to you from the American Motorcycle Association it will be a better tool for me to work with.

Another issue many states are addressing involves frivolous law suits. Other states have found that private property owners are still at risk of having to defend themselves in court just to prove a law suit was frivolous. The states with successful trail programs are recognizing this and changing legislation to either allow the state to step in on the property owners behalf or developing an avenue for the courts to evaluate the case before the property owner is financially burdened.

SB 45 may or may not, in its current form, be the tool I need to preserve and promote trails for the snowmobilers whose economic impact state wide exceeds \$80 million annually. However, I am the one who will apply this legislation by trying to convince private property owners that they will not be burdened by allowing public access to their land. Thanks for all your effort on on SB 45 and I look forward to the day when we are successful in having lease agreements signed that allow recreational use of private property.

Respectfully,  
Scott Heidorn

I'm

**Subject:** SB 45

**Date:** Fri, 2 Apr 1999 09:48:17 -0900

**From:** "Michele Trainor" <mtt@knix.net>

**To:** <Senator\_Rick\_Halford@legis.state.ak.us>

**CC:** "Lance Stevens" <gizmo@arctic.net>

Dear Senator Halford,

It is my understanding that SB 45 is momentarily stalled pending changes in its wording and interpretation. Liability is currently the single most contributing factor towards access denial. Alaska has probably one of the most complete trails system in the United States. However, with the threat of liability looming over landowners' heads, we are finding access routes severed and/or denied. No one can fault the landowner for such actions. Please, if there is anything the Alaska State Snowmobile Association can do to help this process along, do not hesitate to contact us. As it stands, our state association is one of the few denied insurance coverage for this very reason. Therefore, we cannot pass it on to local clubs. The ASSA appreciates all the help and attention you have given to this matter. Thank you so very much for your time and consideration.

Sincerely,

Michele T. Trainor

\*\*\*\*\*  
Michele T. Trainor  
President, ASSA  
[mtt@knix.net](mailto:mtt@knix.net)



# Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary  
 committee name  
 committee on SB 45, dated 4/14/99  
 bill/ subject

As President of the Alaska State Snowmobile Association, I would like to offer my support for the passage of SB 45. Passage of such a bill is all-important to retain the natural trails system Alaska now posses. With the passing of lands into private hands, we are witnessing more trail heads severed and trails denied. Land owners often cite their willingness to allow trail access through their lands if they could be granted immunity. Unfortunately, we are not able to do that under current Alaskan laws. Additionally, the ASSA is one of the few, if not the only, state snowmobile association unable to obtain insurance coverage for itself or its club. Once again, this is a direct result of us unable to grant any immunity to land owners. No insurance company, including ones insuring other associations, will consider us. Passage of SB 45 will allow us to legally and lawfully pursue and retain a trails system in Alaska and obtain insurance for ourselves and the clubs. This can only serve to benefit communities and establishments along the trail routes.

Signed:

Michelle T. Trainer  
 Testifier  
Alaska State Snowmobile Assoc.  
 Representing (Optional)  
P.O. Box 324 Delta Jct. AK 99737  
 Address  
907-895-4254  
 Phone No.



ALASKA SNOWMOBILE REPRESENTATIVES ASSOCIATION

P.O. Box 243664 • Anchorage, AK 99524-3664 • (907) 258-3700

RECEIVED  
MAR 30 1999

Ans'd.....

March 25, 1999

The Honorable Robin Taylor  
State Capitol Room 30  
Juneau, AK 99801-1182

Dear Senator Taylor,

I am writing to request your support in moving forward SB 45. This bill is vitally important to the snowmachine community. It is in fact necessary if we are to develop snowmachine corridors and trail access programs for Alaska. Many of our board members and constituents heard your comments last year concerning snowmachine trail development at the "Arctic Man" event. We were pleased to hear that you are supportive of trail development and access for Alaskan recreationalists and tourists. The entire organized snowmachine community is supportive of Senator Halford's bill. I know specifically that without passage of SB 45 the Anchorage to Eagle River corridor access trail will not be implemented by Fort Richardson's Commander. I am asking on behalf of A.S.R.A. and Alaskan snowmobilers that you help to get this bill moving ahead as soon as possible. I thank you for taking time to hear our concerns.

If I may be of further assistance, please give me a call at 907-266-2200.

Sincerely,

Max J. Lowe  
President

CC: Tim Borgstrom, A.E.D.C.  
Kevin Hite, A.S.S.A.  
Glen Swann, A.S.C.



# ALASKA BOATING ASSOCIATION



Rick Halford, Senator  
State Capital  
Juneau, Alaska  
99801-1182

Subj. SB 45

Feb. 4<sup>th</sup>, 1999

Dear Senator Halford,

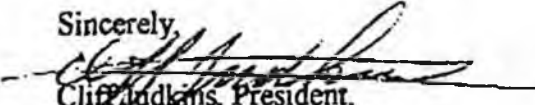
Thank you for introducing SB 45. I see this issue from two sides.

As an owner of remote property I allow snowmachines and dog sleds to cross my property at will. I have never had any property damage. People seem to respect private property. However, I am continually aware of the liability that I am exposed to; I just hate to put up signs and prohibit people from going about their business. I certainly feel the exposure and I can understand that people with less commitment to public access would close their property.

As President of the Alaska Boating Association, a member of the Alaska Outdoor Council and a member of the Mat-Su Fish and Game Advisory Committee I am continually confronted by cases of public access restrictions where it is necessary to cross private land to access public land. Anything that we can do to promote and assure equal access to Alaska's resources is worth the effort. We also support the technical correction concerning vacation of RS 2477 rights of way and section line easements.

Again, we are in full support of SB 45.

Sincerely,

  
Cliff Judkins, President,  
Alaska Boating Association

Cliff Judkins - President • P.O. Box 874124 • Wasilla, Alaska 99687  
(907) 373-3591 • Fax 373-3592 • E-Mail: [cjudkins@customcpu.com](mailto:cjudkins@customcpu.com)



## Alaska Outdoor Council

PO Box 73902  
Fairbanks, AK 99707-3902  
Tel./FAX: (907) 455-4AOC (4262)  
[outdoor@polarnet.com](mailto:outdoor@polarnet.com)

FEB 08 1999

February 3, 1999

Senator Rick Halford  
Alaska State Legislature  
State Capitol MS 3101  
Juneau, AK 99801-1182

Dear Senator Halford:

The Alaska Outdoor Council's board of directors voted unanimously to support Senate Bill 45, your bill relating to tort immunity and maintaining RS2477 right of ways.

Adopting SB45 as law will be a great benefit to public-spirited landowners who support public use trails and other uses on private lands. Our "litigious society" really chills those people's enthusiasm when the prospect looms of being liable in tort for injuries that are no fault of theirs. Without the protection afforded by SB45 a proliferation of no trespassing signs is predictable.

The second part of SB 45 is critically important to ensure that attrition of public access does not occur or is minimized. Under present circumstances the very limited expectations for new roads, railroads, etc. may lend credibility to the idea that RS2477 rights of ways are largely expendable. Following such a philosophy would be a great disservice to the outdoor user public. The public will have to rely more on legally sanctioned trails as increasing private ownership materializes, and access rules on federal areas become more rigid.

The Alaska Outdoor Council urges passage of SB45. Thank you again for your efforts on these vital public access matters.

Sincerely,

Richard H. Bishop  
Vice President

*P.S. Question arose: How would this relate to Dipnetters who pay \$10 state fee for access & services on Native Corp. land?*



TELEPHONE (907) 894-4702

FAX (907) 894-1205

## Chugiak-Eagle River Chamber of Commerce

P.O. BOX 770363  
EAGLE RIVER, ALASKA 9957711401 OLD GLENN HIGHWAY, SUITE 110A  
EAGLE RIVER, ALASKA 99577*"Place of Many Rivers"*

Chugiak-Eagle River Chamber of Commerce  
Board of Directors  
RESOLUTION 98-007

**A RESOLUTION IN SUPPORT OF A STATEWIDE TRAILS PLAN &  
LIABILITY REDUCTION LEGISLATION**

WHEREAS the Chugiak-Eagle River Chamber Commerce is a community based nonprofit organization which encourages projects that allow for quality community growth and development in the state of Alaska; and

WHEREAS sufficient data exists demonstrating the positive recreational impact of regulated and controlled snowmobile corridors on communities in the lower 48 and Canada; and

WHEREAS in the State of Alaska there exists a significant number of people whose needs for local snowmobile infrastructure and other use opportunities have gone largely unmet; and

WHEREAS the state of Alaska currently has existing (as well as planned) world-class trails and infrastructure for other recreational user groups such as cross-country skiing and dog mushing; and

WHEREAS the creation of snowmobile infrastructure will complement the existing summer tourist industry thereby enhancing or creating year-round visitor industry jobs - which will benefit all affected Alaska communities; and

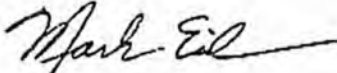
WHEREAS the Chugiak-Eagle River Chamber supports the development of snowmobile corridors which would create a state-wide trail system.

NOW THEREFORE BE IT RESOLVED that the Chugiak-Eagle River Chamber of Commerce Board of Directors recommends to the Governor and Legislature of the State of Alaska that these entities develop in an expeditious manner statewide trails design criteria. BE IT FURTHER RESOLVED that the Chamber of Commerce supports the creation of liability reduction legislation which would hold harmless landowners and other

entitles whose property becomes part of the statewide trails system.

Signed this 12<sup>th</sup> day of November 1998.

Respectfully submitted by,



Mark Eidem  
President



APR 06 1999

## SnoTRAC

Snowmobile Trails Advisory Committee  
3601 "C St. #1280  
Anchorage, AK 99503

March 30, 1999

Senator Rick Halford  
State Capital, Room 121  
Juneau, AK 99801-1182

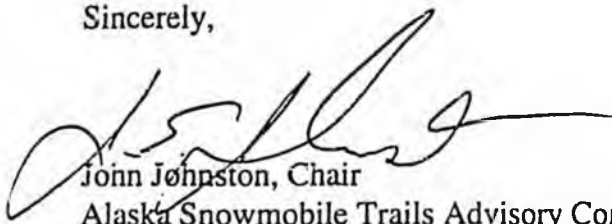
Dear Senator Halford:

At the March 19, 1999 regular meeting of the Alaska Snowmobile Trails Advisory Committee (SnoTRAC), there was unanimous support for a motion to support both Senate Bill 45 and House Bill 88, providing immunity to private property owners from liability when they allow recreational trail use across their property.

The committee feels very strongly that if traditional trails are to be protected in Alaska for the public good, and if new trails are to be established which may in part require crossing private property, that the state will need to provide some protection to property owners as provided in these two bills.

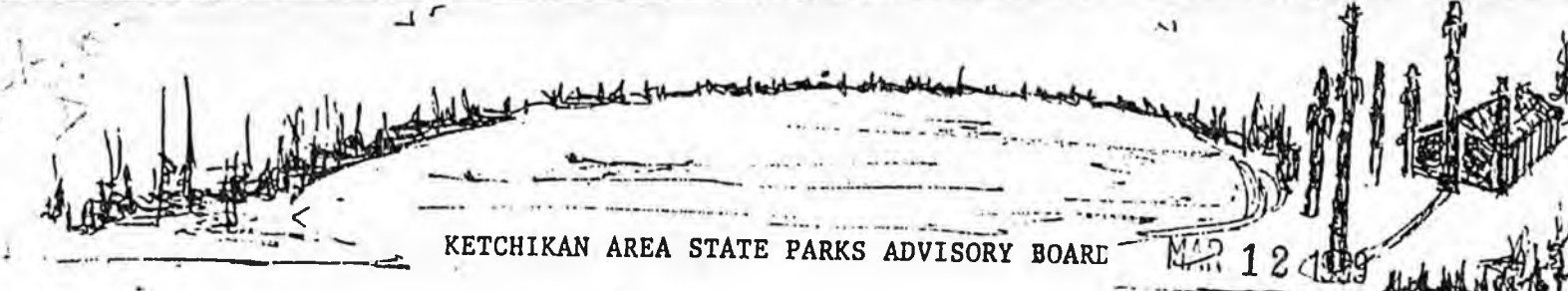
The SnoTRAC committee urges the Legislature and the Administration to enact this much needed new law.

Sincerely,



John Johnston, Chair  
Alaska Snowmobile Trails Advisory Committee

cc: Sen. or Robin Taylor  
Representative Norman Rokeberg



KETCHIKAN AREA STATE PARKS ADVISORY BOARD

MAR 12 1999

March 10, 1999

Honorable Rick Halford  
Senate Judiciary  
State Capital  
Juneau, Alaska 99801-1182

Dear Senator Halford,

The Ketchikan Area State Parks Advisory Board has resolved unanimously to support the passage of Senate Bill 45, providing protection from litigation for private property owners who have trails crossing their land. However, we would like to see added a requirement that easements across private land be dedicated for continued public use.

The Board would appreciate very much your pushing the bill, getting it out and through the Senate process, with the addition mentioned above, if possible. We feel that this protection is necessary for both private land owners and the public interest. Free and open trails have long been a tradition in Alaska.

We also support House Bill 88 which has a similar goal of protection for the land owner and the dedication of trails to public use.

Thank you very much for your consideration.

Sincerely,



Robert Olsen, Chair  
Ketchikan Area State Parks Advisory Board

RECEIVED  
APR 30 1999

Asst. \_\_\_\_\_

**SnoTRAC**

**Snowmobile Trails Advisory Committee**  
3601 "C St. #1280  
Anchorage, AK 99503

March 30, 1999

Senator Robin Taylor  
State Capital, Room 30  
Juneau, AK 99801-1182

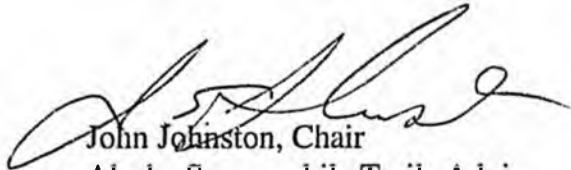
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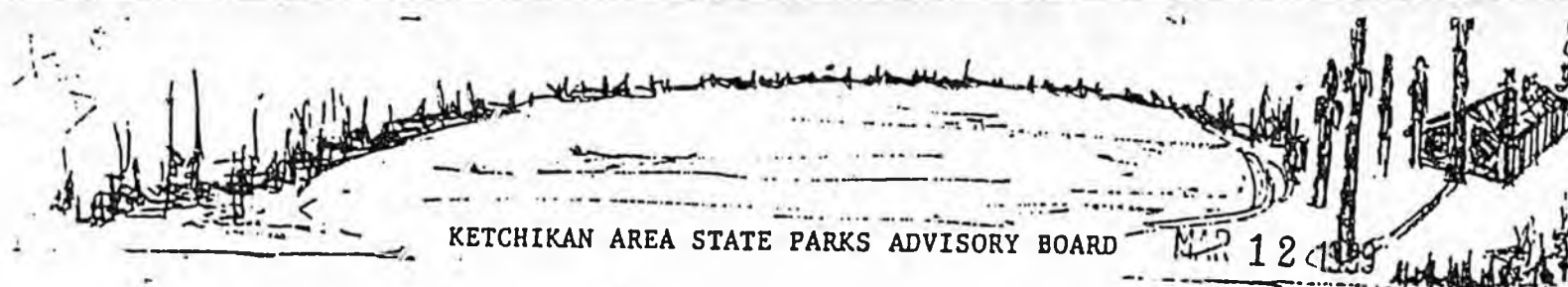
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Sincerely,



John Johnston, Chair  
Alaska Snowmobile Trails Advisory Committee

cc: Representative Norman Rokeberg  
Senator Rick Halford



KETCHIKAN AREA STATE PARKS ADVISORY BOARD

MAR 12 1999

March 10, 1999

Honorable Rick Halford  
Senate Judiciary  
State Capital  
Juneau, Alaska 99801-1182

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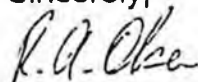
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Sincerely,



Robert Olsen, Chair  
Ketchikan Area State Parks Advisory Board



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

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Juneau, Alaska  
99801-1182  
Phone (907) 465-4958  
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Chugiak, Alaska 99567  
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600 E. Railroad Avenue  
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## Senate Bill 45 Sponsor Statement

**"An Act relating to tort immunity for personal injuries or death occurring on land; relating to the vacation by the state or a municipality of rights-of-way acquired by the state under former 43 U.S.C. 932; and providing for an effective date."**

Senate Bill 45 expands the limited immunity granted under AS 09.65.200 to include improved land as well as unimproved land, providing that the land was entered onto for purpose of recreation and that there was no compensation paid for the access or use of the land.

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SB 45 also makes a technical correction to the statutes governing vacation of RS 2477 rights-of-way and section line easements granted under former 43 U.S.C. 932. In addition, SB 45 provides concise direction in Title 29, the statutes pertaining to local governments, that is reflective of the procedures for easement vacation existing in Title 19.

SB 45 will assist in the effort to expand recreational opportunity for Alaskans and visitors alike. I urge your support for this legislation.

Sponsor Statement

1-LS0066I ✓  
Luckhaupt  
3/19/99

**CS FOR SENATE BILL NO. 45(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATOR HALFORD**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act providing that a person who grants a conservation easement to the state  
2 that provides public access for recreational purposes is immune from tort liability,  
3 other than gross negligence or reckless or intentional misconduct, for damages to  
4 a person who uses the easement; relating to the vacation by the state or a  
5 municipality of rights-of-way acquired by the state under former 43 U.S.C. 932;  
6 and providing for an effective date."

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

8 \* Section 1. AS 19.30.410 is amended to read:

9           **Sec. 19.30.410. Vacation of rights-of-way.** Notwithstanding another provision  
10 of law, the Department of Natural Resources, the Department of Transportation and  
11 Public Facilities, or another agency of the state may not vacate a right-of-way acquired  
12 by the state under former 43 U.S.C. 932 unless

13                   (1) a reasonably comparable, established alternate right-of-way or

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means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;

(2) the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the best interests of the state; or

(3) the vacation is approved by the legislature.

\* Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

(59) AS 29.35.090(b) (certain vacations of rights-of-way prohibited).

\* Sec. 3. AS 29.35.090 is amended by adding a new subsection to read:

(b) Notwithstanding AS 29.40.160 or other provisions of law, a municipality may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932. This subsection applies to home rule and general law municipalities.

\* Sec. 4. AS 34.17 is amended by adding a new section to read:

**Sec. 34.17.055. Tort immunity from personal injuries or death occurring on land subject to a conservation easement.** In addition to the immunity provided by AS 09.65.200, an owner of land subject to a conservation easement that has been granted to and accepted by the state and that provides public access for recreational purposes on the land subject to the conservation easement is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages to a person who uses the easement to enter onto or remain on the land subject to the easement if

(1) the person had no responsibility to compensate the owner for the person's use of the easement or the land; and

(2) the damages arise out of the person's use of the easement for recreational purposes on the land.

\* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

*is not more than 50' in width and*

HOUSE BILL NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/10/99

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of landowners and others for civil damages for  
2 certain acts or omissions occurring on land."

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

4 \* Section 1. AS 09.65.200 is repealed and reenacted to read:

5 Sec. 09.65.200. Immunity for civil damages for certain acts or omissions  
6 occurring on land. (a) An owner of unimproved land is not liable in tort, except for  
7 an act or omission that constitutes gross negligence or reckless or intentional  
8 misconduct, for damages for the injury to or death of a person who enters onto or  
9 remains on the unimproved portion of land if

10 (1) the injury or death resulted from a natural condition of the  
11 unimproved portion of the land, ~~the person entered onto the land for recreation;~~ and

12 (2) ~~the person had no responsibility to compensate the owner for the~~  
13 person's use or occupancy of the land.

14 (b) In addition to the immunity provided under (a) of this section, an owner

1 of land is not liable for civil damages, except for an act or omission that constitutes  
2 gross negligence or reckless or intentional misconduct, to a person who enters onto or  
3 remains on the land if

4 (1) under AS 34.17 a conservation easement providing public access  
5 to the land for recreational purposes has been conveyed;

6 (2) the person had no responsibility to compensate the owner for the  
7 person's use of the easement on the land; and

8 (3) the civil damages arise out of the person's use of the easement on  
9 the land.

10 *omit* (c) The immunity under (b) of this section extends to the grantee of the  
11 conservation easement under AS 34.17 providing public access to the land for  
12 ~~recreational purposes.~~

13 (d) This section does not enhance or diminish rights granted under former 43  
14 U.S.C. 932 (R.S. 2477).

15 (e) In this section, "unimproved land" includes land that contains

16 (1) a trail;

17 (2) an abandoned aircraft landing area; or

18 (3) a road built to provide access for natural resource extraction, but  
19 which is no longer maintained or used.

1-LS0066H  
Luckhaupt  
3/18/99

**CS FOR SENATE BILL NO. 45(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

Offered:  
Referred:

Sponsor(s): **SENATOR HALFORD**

**A BILL**

**FOR AN ACT ENTITLED**

*Tighter title with  
cannot be changed  
in the House (died)*

1 "An Act relating to liability for damages to a person using a conservation  
2 easement; relating to the vacation by the state or a municipality of rights-of-way  
3 acquired by the state under former 43 U.S.C. 932; and providing for an effective  
4 date."

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

6 \* **Section 1.** AS 19.30.410 is amended to read:

7 **Sec. 19.30.410. Vacation of rights-of-way.** Notwithstanding another provision  
8 of law, the Department of Natural Resources, the Department of Transportation and  
9 Public Facilities, or another agency of the state may not vacate a right-of-way acquired  
10 by the state under former 43 U.S.C. 932 unless

11 (1) a reasonably comparable, established alternate right-of-way or  
12 means of access exists that is sufficient to satisfy all present and reasonably  
13 foreseeable uses;

14 (2) the right-of-way is within a municipality, the municipal assembly

1 or council has requested the vacation, a reasonable alternative means of access is  
2 available, and the vacation is in the best interests of the state; or

3 (3) the vacation is approved by the legislature.

4 \* **Sec. 2.** AS 29.10.200 is amended by adding a new paragraph to read:

5 (59) AS 29.35.090(b) (certain vacations of rights-of-way prohibited).

6 \* **Sec. 3.** AS 29.35.090 is amended by adding a new subsection to read:

7 (b) Notwithstanding AS 29.40.160 or other provisions of law, a municipality  
8 may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932. This  
9 subsection applies to home rule and general law municipalities.

10 \* **Sec. 4.** AS 34.17 is amended by adding a new section to read:

11 **Sec. 34.17.055. Tort immunity from personal injuries or death occurring**  
12 **on land subject to a conservation easement.** In addition to the immunity provided  
13 by AS 09.65.200, ~~the owner of~~ an owner of land subject to a conservation easement  
14 that has been granted to and accepted by the state and that provides public access for  
15 recreational purposes on the land subject to the conservation easement ~~is~~<sup>is</sup> not liable  
16 in tort, except for an act or omission that constitutes gross negligence or reckless or  
17 intentional misconduct, for damages to a person who uses the easement to enter onto  
18 or remain on the land subject to the easement if

19 (1) the person had no responsibility to compensate the owner for the  
20 person's use of the easement or the land; and

21 (2) the damages arise out of the person's use of the easement for  
22 recreational purposes on the land.

23 \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

**SB**

**57**

# SENATE COMMITTEE REPORT

DATE: 3/16/99

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered      SENATE BILL NO. 57

"An Act relating to vulnerable adults; and providing for an effective date."

and recommends:

be replaced with \_\_\_\_\_ CS SB57 ( Jud )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the (S) FINANCE Committee

**Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Keith Helford</i>	✓		
		<i>John E. Miller</i>	✓		
		<i>W. Bruce Souley</i>	✓		
CHAIR: <i>Adrian Taylor</i> ✓		CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**FISCAL NOTE**

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. CSSB 57(JUD)**

Revision Date: 4/1/99  
 Title: "An act relating to vulnerable adults"

Department Affected: Administration  
 BRU: Senior Services  
 Component: Protection, Community Services, Administration

Sponsor: Health, Education & Social Services  
 Requestor: (S) JUD

COMPONENT SERIAL NO. 2083

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 97) cost: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

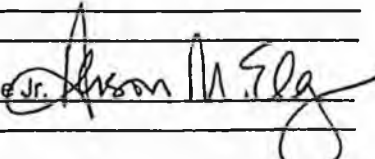
**ANALYSIS:** (Attach a separate page if necessary.)

This bill will have no fiscal impact on the Department of Administration.

SB 57 increases the department's legal authority to protect vulnerable adults from harm perpetrated by guardians, attorneys-in-fact, or surrogate decision makers by making changes and additions to AS 47.24.015 (c), .019 (a), .019 (c), and .050 (b). The amended language in these sections includes the additions of the terms "guardians, attorneys-in-fact, or surrogate decision makers" as possible perpetrators of harm. Additional amended language gives the department clear authority to petition for a "change of guardian." The amended language also gives the department authority to not disclose a report of harm to "guardians, attorneys-in-fact, or surrogate decision makers" who are alleged perpetrators who are being investigated as such.

Prepared by: Jane Demmert  
 Division: Senior Services

Phone: (907)269-3674  
 Date: \_\_\_\_\_

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

Date: 4/2/99

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FISCAL NOTE

1999 LEGISLATIVE SESSION

BILL: CSSB 57(JUD)

ANALYSIS: (continued)

2) It provides for the Alaska Commission on Aging to annually contract with the State Ombudsman to operate the Long Term Care Ombudsman function. The Alaska Commission on Aging will initiate an annual RSA to the State Ombudsman for up to \$213,016: this provides for continuation at FY 99 functional levels. Incorporated are costs for 1) salaries and benefits for three present employees; 2) travel; 3) contractual including IT support, utilities, space for fte of 4 (includes one office area for housing p-t Senior Employment workers) at current state space allocation rates calculated at current lease rates, membership dues, conference registrations, etc.

SENATE BILL NO. 57

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 2/8/99

Referred: HESS, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to vulnerable adults; and providing for an effective date."

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

3 \* Section 1. AS 47.24.015(c) is amended to read:

4 (c) The department, or its designee, shall immediately terminate an  
5 investigation under this section upon the request of the vulnerable adult who is the  
6 subject of the report made under AS 47.24.010 unless [ <sup>probable</sup> HOWEVER, IF] the  
7 investigation to that point has resulted in ~~reasonable~~ <sup>probable</sup> cause to believe that the  
8 vulnerable adult is in need of protective services, the request is made personally by  
9 the vulnerable adult and the vulnerable adult is not competent to make the  
10 request on the adult's own behalf, or the request is made by the vulnerable  
11 adult's guardian, attorney-in-fact, or surrogate decision maker and that person  
12 is the alleged perpetrator of abuse and is being investigated under this chapter.  
13 If the department has <sup>probable</sup> reasonable cause to believe that the vulnerable adult is in  
14 need of protective services.

15 (1) the department may petition the court as set out in AS 47.24.019;

1 \* Sec. 5. TRANSITION. A department affected by this Act may proceed to adopt  
2 regulations necessary to implement this Act. Regulations to implement a provision of this Act  
3 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
4 of sec. 1 of this Act.

5 \* Sec. 6. Section 5 of this Act takes effect immediately under AS 01.10.070(c).

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

SENATE BILL NO. 57

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 2/8/99

Referred: HESS, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to vulnerable adults; and providing for an effective date."

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

3 \* Section 1. AS 47.24.015(c) is amended to read:

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5 investigation under this section upon the request of the vulnerable adult who is the  
6 subject of the report made under AS 47.24.010 unless [. HOWEVER, IF] the  
7 investigation to that point has resulted in <sup>probable</sup> ~~reasonable~~ cause to believe that the  
8 vulnerable adult is in need of protective services, the request is made personally by  
9 the vulnerable adult and the vulnerable adult is not competent to make the  
10 request on the adult's own behalf, or the request is made by the vulnerable  
11 adult's guardian, attorney-in-fact, or surrogate decision maker and that person  
12 is the alleged perpetrator of abuse and is being investigated under this chapter.  
13 If the department has <sup>probable</sup> ~~reasonable~~ cause to believe that the vulnerable adult is in  
14 need of protective services,

15 (1) the department may petition the court as set out in AS 47.24.019;

1 or

2 (2) the department or its designee may refer the report made to the  
3 department under AS 47.24.010 to a police officer for criminal investigation.

4 \* Sec. 2. AS 47.24.019(a) is amended to read:

5 (a) If, after investigation under AS 47.24.015, the department has reasonable  
6 cause to believe that a vulnerable adult is in need of protective services and is an  
7 incapacitated person, the department may petition the court under AS 13.26 for  
8 appointment of a guardian or temporary guardian, or for a change of guardian, for  
9 the vulnerable adult for the purpose of deciding whether to consent to the receipt of  
10 protective services for the vulnerable adult.

11 \* Sec. 3. AS 47.24.019(c) is amended to read:

12 (c) If a vulnerable adult who has consented to receive protective services, or  
13 on whose behalf consent to receive protective services has been given, is prevented by  
14 a caregiver, guardian, attorney-in-fact, or surrogate decision maker from receiving  
15 those services, the department may [ASSIST THE VULNERABLE ADULT OR THE  
16 PERSON WHO CONSENTED TO THE VULNERABLE ADULT'S RECEIPT OF  
17 THE SERVICES TO] petition the superior court for an injunction restraining the  
18 caregiver, guardian, attorney-in-fact, or surrogate decision maker from interfering  
19 with the provision of protective services to the vulnerable adult.

20 \* Sec. 4. AS 47.24.050(b) is amended to read:

21 (b) The department shall disclose a report of the abandonment, exploitation,  
22 abuse, neglect, or self-neglect of a vulnerable adult if the vulnerable adult who is the  
23 subject of the report or the vulnerable adult's guardian, attorney-in-fact, or  
24 surrogate decision maker consents in writing. The department may not disclose  
25 a report of the abandonment, exploitation, abuse, neglect, or self-neglect of a  
26 vulnerable adult to the vulnerable adult's guardian, attorney-in-fact, or surrogate  
27 decision maker if that person is an alleged perpetrator of abuse and is being  
28 investigated under this chapter. The department shall, upon request, disclose the  
29 number of verified reports of abandonment, exploitation, abuse, neglect, or self-neglect  
30 of a vulnerable adult that occurred at an institution that provides care for vulnerable  
31 adults or that were the result of actions or inactions of a public home care provider.

1 \* Sec. 5. TRANSITION. A department affected by this Act may proceed to adopt  
2 regulations necessary to implement this Act. Regulations to implement a provision of this Act  
3 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
4 of sec. 1 of this Act.

5 \* Sec. 6. Section 5 of this Act takes effect immediately under AS 01.10.070(c).

*passes  
Amend #1*

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ~~GREEN~~ *Jayler*

TO: SB 57

1 Page 1, line 1, following "adults":

2 Insert "and to the functions of the office of the state long term care ombudsman  
3 on behalf of vulnerable adults and senior citizens"

4 Page 1, following line 2:

5 Insert new bill sections to read:

6 **"\* Section 1.** AS 44.21.225 is amended to read:

7 **Sec. 44.21.225. Executive director.** The executive director of the  
8 commission shall

9 (1) formulate a comprehensive statewide plan that identifies the  
10 concerns and needs of older Alaskans and present that plan to the commission;

11 (2) administer, with the approval of the commissioner of  
12 administration, federal programs as provided under 42 U.S.C. 3001 - 3045i (Older  
13 Americans Act), as amended; in the administration of federal programs under this  
14 paragraph, the executive director shall

15 (A) contract with the office of the ombudsman established  
16 under AS 24.55 to carry out the requirements relating to the state long  
17 term care ombudsman program set out in 42 U.S.C. 3058g and  
18 AS 44.21.231 - 44.21.239; and

19 (B) set out in the commission's program budget prepared  
20 under AS 37.07 the amount that the commission has agreed to provide  
21 under the contract with the office of the ombudsman for the state long  
22 term care ombudsman program services; and

23 (3) administer, with the approval of the commissioner of  
24 administration, state programs as provided under AS 47.65.

1 \* Sec. 2. AS 44.21.230(b) is amended to read:

2 (b) To accomplish its duties, the commission may

3 (1) review, evaluate, and comment on [UPON] state programs  
4 concerned with the problems and the needs of older Alaskans;

5 (2) collect facts and statistics, and make studies of conditions and  
6 problems pertaining to the employment, health, housing, financial security, social  
7 welfare, and other concerns that bear upon the well-being of older Alaskans;

8 (3) provide information about public programs that would be of  
9 interest or benefit to older Alaskans;

10 (4) appoint special committees, which may include persons who are  
11 not members of the commission, to complete necessary studies;

12 (5) promote community education efforts regarding the problems and  
13 concerns of older Alaskans;

14 (6) contract for necessary services;

15 (7) consult and cooperate with persons, organizations, and groups  
16 interested in or concerned with programs of assistance to older Alaskans;

17 (8) advocate improved programs of benefit to older Alaskans;

18 (9) set standards for levels of services for older Alaskans for programs  
19 administered by the commission; and

20 (10) adopt regulations necessary for the administration of  
21 AS 44.21.200 - 44.21.230 [AS 44.21.200 - 44.21.240] and to comply with federal law.

22 \* Sec. 3. AS 44.21.230(c) is amended to read:

23 (c) The commission may not investigate, review, or undertake any  
24 responsibility for the longevity bonus program under AS 47.45 or [, EXCEPT FOR  
25 ACTIVITIES OF THE OFFICE OF THE LONG TERM CARE OMBUDSMAN,] the  
26 Alaska Pioneers' Homes under AS 47.55.

27 \* Sec. 4. AS 44.21.231(c) is amended to read:

28 (c) The ombudsman may not have a financial interest in a long term care  
29 facility in the state. [THE COMMISSION SHALL ADOPT REGULATIONS TO  
30 ENSURE THAT THE OMBUDSMAN, AND EMPLOYEES AND VOLUNTEERS  
31 OF THE OFFICE, DO NOT HAVE A CONFLICT OF INTEREST OR AN  
32 APPEARANCE OF A CONFLICT OF INTEREST.]

1 \* **Sec. 5.** AS 44.21.232(c) is amended to read:

2 (c) The ombudsman may

3 (1) subpoena witnesses, compel their attendance, require the production  
4 of evidence, administer oaths, and examine any person under oath in connection with  
5 a complaint described under (a) of this section in the manner set out in AS 24.55;  
6 [THE POWERS DESCRIBED IN THIS PARAGRAPH SHALL BE ENFORCED BY  
7 THE SUPERIOR COURT;]

8 (2) pursue administrative, legal, or other appropriate remedies on  
9 behalf of an older Alaskan who resides in a long term care facility in the state.

10 \* **Sec. 6.** AS 44.21.238 is amended to read:

11 **Sec. 44.21.238. Legal counsel [FOR THE LONG TERM CARE**  
12 **OMBUDSMAN].** The attorney general shall provide legal advice and representation  
13 in connection with any matter relating to the powers, duties, and operation of the  
14 ombudsman as to a duty or power arising under AS 44.21.231 - 44.21.239  
15 [OFFICE,] and in any legal action brought against the ombudsman or an employee,  
16 volunteer, or other representative of the ombudsman as to a duty or power arising  
17 under AS 44.21.231 - 44.21.239 [OFFICE]. If the attorney general cannot provide  
18 legal advice or representation because of a conflict of interest, the ombudsman may  
19 employ private legal counsel.

20 \* **Sec. 7.** AS 44.21.239 is amended to read:

21 **Sec. 44.21.239. Cooperative agreements.** The ombudsman may  
22 [COMMISSION SHALL] enter into cooperative agreements concerning the duties  
23 and powers described in AS 44.21.232 [OPERATIONS OF THE OFFICE], including  
24 protocols for investigations, with state and local agencies that have jurisdiction over  
25 long term care facilities or over the abuse and neglect of older Alaskans.

26 \* **Sec. 8.** AS 44.21.240(3) is amended to read:

27 (3) "office" means the office of the [LONG TERM CARE]  
28 ombudsman;

29 \* **Sec. 9.** AS 44.21.240(5) is amended to read:

30 (5) "ombudsman" means the [LONG TERM CARE] ombudsman  
31 appointed under AS 24.55.020 [HIRED UNDER AS 44.21.231];

32 \* **Sec. 10.** AS 47.24.010(f) is amended to read:

1 (f) A person listed in (a) of this section who reports to the [LONG TERM  
2 CARE] ombudsman under AS 44.21.232, or to the Department of Health and Social  
3 Services, that a vulnerable adult has been exploited, abused, or neglected in an out-of-  
4 home care facility is considered to have met the duty to report under (a) of this  
5 section.

6 \* Sec. 11. AS 47.24.013(a) is amended to read:

7 (a) If a report received under AS 47.24.010 regards the abandonment,  
8 exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of  
9 age or older that is alleged to have been committed by or to have resulted from the  
10 negligence of the staff or a volunteer of an out-of-home care facility, including a  
11 facility licensed under AS 18.20, in which the vulnerable adult resides, and, if the  
12 Department of Health and Social Services licenses that type of facility, the  
13 Department of Administration shall transfer the report for investigation to the [LONG  
14 TERM CARE] ombudsman under AS 44.21.232 and the Department of Health and  
15 Social Services.

16 \* Sec. 12. AS 47.24.013(c) is amended to read:

17 (c) Upon receipt of a report from the department under (a) or (b) of this  
18 section, the [LONG TERM CARE] ombudsman and the Department of Health and  
19 Social Services shall

20 (1) conduct an investigation as appropriate under AS 44.21.232 or this  
21 title, respectively;

22 (2) coordinate and cooperate in their responses to and investigations  
23 of the report if their jurisdictions overlap;

24 (3) provide the results of their actions or investigations to the central  
25 information and referral service of the department within 60 days after the receipt of  
26 the report.

27 \* Sec. 13. AS 47.24.013(d) is amended to read:

28 (d) If the [LONG TERM CARE] ombudsman or the Department of Health  
29 and Social Services receives directly a report regarding the abandonment, exploitation,  
30 abuse, neglect, or self-neglect of a vulnerable adult in an out-of-home care facility,  
31 the ombudsman or the Department of Health and Social Services shall provide the  
32 report, and the results of their actions or investigations regarding the report, to the

1 central information and referral service of the Department of Administration. The  
2 Department of Administration may investigate the report as described in AS 47.24.015  
3 if the department determines that action is appropriate.

4 \* **Sec. 14.** AS 47.24.013(e) is amended to read:

5 (e) If the results of an investigation by the [LONG TERM CARE]  
6 ombudsman or the Department of Health and Social Services are provided to the  
7 Department of Administration under (c) or (d) of this section, the Department of  
8 Administration may make a final determination as described in AS 47.24.015(b),  
9 based on the investigation results provided, regarding services to be offered to the  
10 vulnerable adult."

11 Page 1, line 3:

12 Delete "**Section 1**"

13 Insert "**Sec. 15**"

14 Renumber the following bill sections accordingly.

15 Page 2, following line 31:

16 Insert new bill sections to read:

17 "**Sec. 19.** AS 47.33.310(b) is amended to read:

18 (b) An assisted living home shall post in a prominent place in the home

19 (1) a copy of the rights set out in AS 47.33.300;

20 (2) the name, address, and phone number of the [LONG TERM  
21 CARE] ombudsman [HIRED UNDER AS 44.21.231] and, if relevant to residents, of  
22 the advocacy agency for persons with a developmental disability or mental illness;

23 (3) the telephone number of an information or referral service for  
24 vulnerable adults; and

25 (4) a copy of the grievance procedure established under AS 47.33.340.

26 \* **Sec. 20.** AS 44.21.231(a) and 44.21.231(b) are repealed."

27 Renumber the following bill sections accordingly.

1 Page 3, line 1, following "affected by":

2           Insert "secs. 15 - 18 of"

3 Page 3, line 2:

4           Following "implement":

5                   Insert "secs. 15 - 18 of"

6           Following "of":

7                   Insert "secs. 15 - 18 of"

8 Page 3, line 4:

9           Delete "sec. 1"

10          Insert "sec. 15"

11 Page 3, line 5:

12          Delete "Section 5"

13          Insert "Section 21"

14 Page 3, following line 5:

15          Insert a new bill section to read:

16          **\*\* Sec. 23.** Sections 1 - 14, 19, and 20 of this Act take effect July 1, 1999."

# Alaska State Legislature



State Capitol  
Juneau AK  
99801-1182

Official Business

## Long-Term Care Task Force

### Senate Bill No. 57

**An Act relating to vulnerable adults; and providing for an effective date.**

This bill will enhance the protective services afforded to vulnerable adults by reducing the possibility of exploitation or abuse by guardians, attorneys-in-fact, and surrogate decision-makers.

Under current law, the Department of Administration must immediately terminate an investigation of abuse upon the request of the vulnerable adult who is the subject of the report. Unfortunately, in some instances, the adult's guardian, attorney-in-fact, or surrogate decision-maker, who is the alleged perpetrator of the abuse and the subject under investigation, may make the request. As written, AS 47.24.015 (c) does not allow the department any option but to terminate the investigation. This proposed legislation allows the department to continue the investigation and protect the vulnerable adult.

In addition, this bill gives the Department of Administration the option to withhold investigative findings and reports of abandonment, exploitation, abuse, neglect or self-neglect filed with the department if the vulnerable adult's guardian is suspected of the abuse and currently under investigation. This flexibility will give the department the necessary information to effectively continue its inquiry.

The proposed statutory changes are necessary to adequately protect a vulnerable adult in the rare instance in which a guardian, attorney-in-fact, or surrogate decision-maker is the alleged perpetrator. These changes give the Department of Administration the needed leeway to conduct a thorough investigation.

---

*LTC* **TASK FORCE**  
Long-Term Care Task Force

---



FINAL REPORT  
January 1999

*Representative Con Bunde, Co-chairman*  
*Senator Gary Wilken, Co-chairman*

*State Capitol Building*  
*Juneau, Alaska 99801-1182*

---

## LEGISLATION TO PROTECT VULNERABLE ADULTS

---



The Task Force recommends that legislation be drafted and introduced to protect a vulnerable adult from a guardian, attorney-in-fact or surrogate decision-maker who may harm the vulnerable adult.

*“After the department conducts an investigation, a written report is prepared.”*

AS 47.24.900 (16) defines a vulnerable adult as a person 18 years of age or older who, because of physical or mental impairment, is unable to meet his or her own needs or to seek help without assistance.

Under current law, if a person has reason to believe that a vulnerable adult suffers from abandonment, exploitation, abuse, neglect or self-neglect, the concerned individual must contact the Department of Administration which, in most instances, initiates an investigation. After the department conducts an investigation, a written report is prepared of the department's findings, recommendations, and determination of whether supportive or protective services are necessary.

The department must immediately terminate an investigation upon the request of the vulnerable adult who is the subject of the report. Unfortunately, in some instances, the adult's guardian, attorney-in-fact, or surrogate decision-maker, who is the alleged perpetrator of the abuse and the subject under investigation, may make the request. Currently AS 47.24.015 (c) does not allow the Department of Administration any option in such a case but to terminate the investigation. A change to this statute is necessary to adequately protect the vulnerable adult.

*“A problem arises when the vulnerable adult's guardian is under investigation.”*

The investigation findings and the reports of the abandonment, exploitation, abuse, neglect or self-neglect of a vulnerable adult filed with the department are considered confidential. However, the reports are disclosed if the vulnerable adult who is the subject of the report consents in writing. A problem arises when the vulnerable adult's guardian, attorney-in-fact or surrogate decision-maker is suspected of abuse and is under investigation. The disclosure of the complaint, in this case, would severely restrict the department's ability to effectively continue with its inquiry.

The Task Force recognizes that a situation may arise where a guardian, attorney-in-fact or surrogate decision-maker will abuse or harm a vulnerable adult and the statutes should reflect this possibility. The proposed legislation addresses this like-

lihood and gives the Department of Administration the needed leeway to conduct a thorough investigation in order to protect the vulnerable adult. (Appendix B)

Federal and state law provides for long-term care ombudsman services for vulnerable adults who are 60 years and older and reside in a nursing home or an assisted living facility. The Task Force recognizes that vulnerable persons under the age of 60 who reside in nursing homes or assisted living facilities also have a need for protective services. The Disability Law Center, the State Independent Living Council and its regional centers, the Division of Senior Services, and the Division of Mental Health and Developmental Disabilities offer protective and advocacy services to these individuals. Greater access and collaboration between these organizations will help strengthen their ability to meet the needs of these vulnerable persons under the age of 60 who are living in an institutional setting.

*"The Task Force recognizes that vulnerable persons under the age of 60 who reside in nursing homes or assisted living facilities also have a need for protective services."*

The Task Force recommends that these entities coordinate efforts: 1) to increase residents' awareness of the protection and advocacy services available within the state; 2) to facilitate the system's response to complaints and requests for assistance. ♦

---

## WORK FORCE DEVELOPMENT SUMMIT

---

### RECOMMENDATION

8

The Task Force endorses the efforts of the Alaska State Hospital and Nursing Home Association, in conjunction with the other training councils, to hold a statewide Work Force Development Summit.

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On September 17, 1998 the Alaska Human Resource Investment Council (AHRIC) and the University of Alaska Statewide Vocational/Technical Education Advisory Council (UASVTEAC) held a joint meeting in Seward to discuss issues surrounding the demand and capacity of Alaska's health care industry.

The concerns expressed at this joint meeting parallel the testimony received by the Long-Term Care Task Force. Many long-term health caregivers testified in great detail about how fragile the job situation is for people who provide day-to-day health care for seniors and adults with disabilities. Low pay, lack of adequate training and frequent job turnover were some of the reoccurring problems mentioned.

*"Low pay, lack of adequate training and frequent job turnover (are) problems."*



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## Alaska Commission on Aging

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### Resolution 99-3

#### *In support of SB 57: Relating to vulnerable adults*

Whereas SB 57 increases the protections to assure that vulnerable adults are not abused or harmed by their guardian, attorney-in-fact or surrogate decision-maker, and

Whereas SB 57 closes gaps in AS 47.24.015 (c) which currently do not provide for the State of Alaska to conduct thorough investigations in situations where such abuse or harm is believed to be occurring; and

Whereas the Legislative Long Term Task Force Report of January, 1999, recommended the introduction of this legislation in its Recommendation #7;

Now therefore the Alaska Commission on Aging strongly encourages the Twenty-First Alaska Legislature to pass SB 57.

Adopted this 9<sup>th</sup> day of March, 1999.

A handwritten signature in cursive script that reads "Alaire Stanton".

Alaire Stanton  
Chair

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

No. 1  
 Bill Version: SB.57  
 (S) Publish Date: 3/16/99

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to vulnerable adults...."  
 Sponsor: Health, Education & Social Services  
 Requestor: (S) HES

Department Affected: Administration  
 BRU: Senior Services  
 Component: Protection, Community Services, Administration  
 COMPONENT SERIAL NO. 2083

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary.)**

This bill will have no fiscal impact on the Department of Administration.

SB 57 increases the department's legal authority to protect vulnerable adults from harm perpetrated by guardians, attorneys-in-fact, or surrogate decision makers by making changes and additions to AS 47.24.015 (c) , .019 (a), .019 (c) , and .050 (b). The amended language in these sections includes the additions of the terms "guardians, attorneys-in-fact, or surrogate decision makers" as possible perpetrators of harm. Additional amended language gives the department clear authority to petition for a "change of guardian." The amended language also gives the department authority to not disclose a report of harm to "guardians, attorneys-in-fact, or surrogate decision makers" who are alleged perpetrator who are being investigated as such.

Prepared by: Dwight Becker  
 Division: Senior Services

Phone: (907) 269-3674  
 Date: \_\_\_\_\_

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

Date: 3/2/99

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**S B**

**69**





May 13, 1999

Alaska State Legislature  
 Senator Robin Taylor  
 State Capitol  
 Juneau, AK 99801-1182

Dear Senator Taylor,

I am writing you in regard to CS House Bill 69 (FIN) that was recently passed by the Judiciary Committee. This bill impacts our brewery license in a way that will create an even more uneven licensing arena in this state. The fact that a Brewpub licensee would be able to manufacture its product, serve its product for consumption on premise, sell its product for removal off premise AND wholesale its product to a person licensed as a wholesaler under AS 04.11.160 is completely unfair to those of us holding a Brewery license. The Brewery license restricts service for consumption on premise which greatly reduces the potential profits seen by those who are able to sell in this manner. Therefore, those that are able to sell in this manner can reap the benefits of such a sale and establish control of the wholesale market by being able to undersell the competition, knowing it will make up the difference from its own retail sales. With this in mind, I am asking to have Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160." and Section 6 AS 04.11.135(d)(3)(B) "to a wholesaler licensed under AS 04.11.160; or" deleted from this bill. In addition to this deletion, I would like to see Sec. 15 AS 04.16.120(b) amended to read "With the permission of the licensee, a person may bring wine or beer into premises licensed as a beverage dispensary or a restaurant or eating place for consumption by the person while eating food served at a table on the licensed premises. The beverage dispensary or restaurant or eating place may charge a corkage fee for serving wine supplied by a customer." This is the addition of the words "or beer".

The original intent of this bill has gotten greatly skewed with the addition of special interests and the requests made by the Brewers Guild of Alaska have gone ignored. Please note we, the Homer Brewing Company, agrees with the original intent of this bill to extend the Alcoholic Beverage Control Board.

Thank you for your consideration and attention to this matter.

Sincerely,

*Karen E. Berger Lasse Holmes Stephen F. McCasland*

Karen E. Berger/ Lasse Holmes/Stephen F. McCasland - owners  
 Homer Brewing Company  
 1562 Homer Spit Rd. #A  
 Homer, AK 99603  
 (907) 235-3626

Cc: Gail Phillips  
 Norm Rokeberg

7329 Arctic Boulevard ■ Anchorage, AK 99518  
Office: (907) 344-1179 ■ Fax: (907) 344-6656  
Email: [beer@wildales.com](mailto:beer@wildales.com) ■ web site: [www.wildales.com](http://www.wildales.com)



Alaska State Legislature, State Capitol  
Juneau, AK 99801-1182

Dear Senator:

Midnight Sun Brewing Company is now the oldest brewery in Anchorage. Our company is comprised of a small but energetic group, dedicated to producing traditional, high-quality beer that well represents Alaska. Please take the time to read this letter and help us rectify the injustice that House Bill 69 currently represents.

For the most part, House Bill 69 is positive. However, the following sections have been slipped in by Glacier Brewhouse to improve their position without regard to rest of the industry:

**Section 5. AS 04.11.135(a)(5)** "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as wholesaler under AS 04.11.160."

**Section 6. AS 04.11.135(d)(3)(B)** "to a wholesaler licensed under AS 04.11.160: or".

We are advocating that **HB 69 be rectified to pass without the above mentioned sections.**

Representative Rokeberg claims that these new sections "level the playing field" between licensees. In fact, these sections will allow Glacier Brewhouse and Moose's Tooth Pub, as hard liquor license holders, to brew beer, sell beer retail and sell beer wholesale. Currently, Glacier Brewhouse is selling beer wholesale against zoning laws. In order to truly level the playing field, we ask that you remove the above sections to not allow a hard liquor license holder to wholesale beer. Wholesaling beer should remain a function only of brewery license holders. The other brewers that I have talked to are also against the above mentioned sections of this bill, including Homer, Silver Gulch, Borealis, Snow Goose/Sleeping Lady and Alaskan.


These sections were designed solely for one licensee: Glacier Brewhouse. Glacier Brewhouse wants to "have their cake and eat it too". Moose's Tooth Brewery is also now in favor of these sections as it will allow them to open an additional restaurant in Spenard. Allowing HB 69 to pass "as is" only creates more craziness as Moose's Tooth will be forced to sell spirits at their new location in Spenard--a part of town that already has plenty of alcohol-related problems--when all Moose's Tooth wants to do is sell beer and wine.

Allowing the above mentioned sections to stay will help a very small group while immensely hurting our industry as whole. These sections of the bill essentially allow large companies who can spend \$150,000 on a hard liquor license to sell sprits, have live entertainment until the wee morning hours, manufacture beer for on-site sales, manufacture beer for off-premise sales and sell jugs or kegs (up to five gallons) or bottles of beer "to go" like a liquor store. This new type of license would give these companies a huge advantage over bread-and-butter wholesale beer manufacturers like Midnight Sun Brewing Company.

7329 Arctic Boulevard ▪ Anchorage, AK 99518  
Office: (907) 344-1179 ▪ Fax: (907) 344-6656  
Email: [beer@wildales.com](mailto:beer@wildales.com) ▪ web site: [www.wildales.com](http://www.wildales.com)

For the future, Representative Valero has proposed an amendment to HB 69 that would truly make things fair. His amendment proposed the statutes be returned to their pre-1996 state where restaurants and eating places were allowed to also hold brewery licenses. This would allow Moose's Tooth and Glacier as well as other entrepreneurs to open additional restaurants/breweries without involving hard liquor licenses. The rights and privileges of restaurant/brewery licenses should be equivalent to beer and wine licenses, including fee structure, but with the additional rights of a brewery. Restaurant/brewery licenses should not have the advantages of hard liquor licenses (live entertainment after dinner hours, etc.). This would keep the holders of hard liquor licenses happy and neither impact the holders of beer and wine licenses nor the holders of brewery licenses. Many issues and much legislation has stemmed from the revoking of the restaurant/eating establishment/brewery license. The key is to repair the true issue and stop trying to patch the resulting problems—for the good of the entire industry.

Thank you.



Mark Staples  
CEO/Owner



Finance Office  
3401 Derali St., 202-A  
Anchorage, Alaska  
99503

Gary J. Klopfer,  
Member Manager/Owner  
Phone: (907) 561-2274  
Fax: (907) 563-9354

May 12, 1999

Alaska State Legislature  
Senator Robin Taylor  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Taylor:

I own the Snow Goose Restaurant and the Sleeping Lady Brewing Company in downtown Anchorage. **CS House Bill 69(FIN)** that was just passed by the Judiciary Committee impacts my brewery license in a negative way. It also impacts all the other brewery license holders in Alaska in a negative way. This bill contains sections that will now allow hard liquor license holders to act like breweries (without a brewery license) and yet breweries have no such advantage to sell hard liquor or even food to try and compete against this new type of license! In fact, this bill creates a new type of "Super License" that will allow such a license holder to act like: a hard liquor bar, a restaurant, a package store and a brewery! Is this, in fact, what the Senates intent is, to create these Super Licenses for special interests and ignore and harm all the individual type of license holders? I do not believe it is fair nor do I believe it is right to create this new type of Super Licenses.

Please do the right thing and stop the creation of this new type of license. Please delete the following sections from this bill:

**Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160."**

**Section 6. AS 04.11.135(d)(3)(B) "to a wholesaler licensed under AS 04.11.160; or"**

I firmly believe in fairness and a level playing field for all industry in this Great State of Alaska.

Thank you for your time and I would be glad to talk to you about this subject at any time.

Sincerely,

Gary J. Klopfer

SLEEPING LADY BREWING COMPANY  
717 West 3<sup>rd</sup> Ave., Anchorage, Alaska 99501  
(907) 277-7127

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. CSSB69(JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Advisory vote relating to the</u>	BRU <u>Elective Operations</u>
<u>election of the attorney general</u>	Component <u>General and Primary</u>
Sponsor <u>Senator Ward</u>	
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>22</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	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by <u>Gail Fenumia</u> <i>Gail Fenumia</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date/Time <u>3/4/99 11:09 AM</u>
Approved by <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>3/4/99</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 1, 1999

**SUBJECT:** Advisory Vote on Elected Attorney General (Work Order No. 21-LS0452)

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee

**FROM:** Kathryn L. Kurtz *KK*  
Legislative Counsel

Enclosed is a final of Senate Bill No. 69(JUD). I hope it correctly captures the concept of the conceptual amendment.

Please note that this version, as drafted, would prevent placement of the question advisory on the ballot prior to the end of the second regular session. If this is not what the committee intended, let me know.

KLK:pl:glc  
99-032.plm

Enclosure

committee.

# .

With no further business to come before the committee, CHAIRMAN TAYLOR adjourned at 1:41.

EXACT WORDING

SENATOR DONLEY: "Would this be an appropriate time to do that contingent effective date idea that we discussed?"

CHAIRMAN TAYLOR: "Sure"

SENATOR DONLEY: "In case a constitutional amendment makes it through the process, the act would take effect - we can just do it conceptually and move it out; that is simple, an effective date change. The sponsor didn't seem to have an objection to that."

MARK HODGINS: "No, SENATOR DONLEY."

SENATOR DONLEY: "I would move that conceptually, that the act would take effect if the legislature did not place a constitutional

Feb-26-99 03:39P Senate Records

907 465-2931

P-108

*Amend #1*

amendment for the election of the attorney general before the people in the next general election that this would go on the ballot instead."

*X SB 69*

*Sue  
(S) JUD.  
3717*

*(4) version in what form  
Resolution?*

*Put on the ballot, not ask if we should.*

**SENATE BILL NO. 69**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY SENATORS WARD, Taylor**

**Introduced: 2/10/99**

**Referred: State Affairs, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act authorizing an advisory vote by the qualified voters of the state on the  
2 question of the election of the attorney general; and providing for an effective  
3 date."

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

5 \* **Section 1.** The lieutenant governor shall place before the qualified voters of the state at  
6 the next general or special election a question advisory to the legislature of whether the  
7 legislature should propose a constitutional amendment that, if approved by the qualified voters  
8 of the state, would require the election of the attorney general. The question shall appear on  
9 the ballot in substantially the following form:

10 **QUESTION**

11 Shall the Legislature of the State of Alaska propose a constitutional amendment  
12 that would require the election of the attorney general?

13 Yes [ ]

No [ ]

14 \* **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

*amend* > *take effect if Leg. does not put a CA before  
on ballot.*

# LEGAL SERVICES

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FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 15, 1999

**SUBJECT:** Attorney General

**TO:** Senator Jerry Ward  
Attn: Mark Hodgins

**FROM:** Tamara Brandt Cook  
Director

TBC

You have asked a number of questions regarding the office of the attorney general.

(1) What is the attorney general legally required to represent and provide advice to?

Although there are many other specific provisions that apply to the attorney general and the Department of Law, AS 44.23.020 sets out the general duties and powers of the attorney general. Subsection (a) makes the attorney general "the legal advisor of the governor and other state officers." Note that the attorney general is specifically authorized to give legal advice and furnish written legal opinions to members of the legislature, as well as to other state officers. (AS 44.23.020(b)(4))

With respect to representation, the attorney general is charged with bringing and defending actions for the collection of revenue (AS 44.23.020(b)(1)); representing "the state in all civil actions in which the state is a party" (AS 44.23.020(b)(2)); and prosecuting "all cases involving violation of state law" (AS 44.23.020(b)(3)). Additionally, the attorney general has the powers ascribed at common law, including the power to bring any action he or she thinks necessary to protect the public interest. The attorney general has discretionary control of the legal business of the state, both civil and criminal, and the exercise of that discretion is not subject to control or review of the courts on separation of powers grounds. (Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975))

(2) Does the attorney general have the power to enforce constitutional mandates (or overlook constitutional violations) even when directed otherwise by the governor?

Under the reasoning of the Public Defender Agency case the attorney general does have discretion to initiate, prosecute, or dispose of cases (or to fail to initiate cases). However, as the head of a principal department, the attorney general serves at the pleasure of the governor. (Art. III, sec. 25, Constitution of the State of Alaska) The governor has the power to control the discretion of the attorney general by removal from office.

Senator Jerry Ward  
February 15, 1999  
Page 2

(3) If the attorney general has a clear mandate, such as a statute put in place by the people or the legislature, may he or she ignore it if directed to do so by the governor?

Art. III, sec. 16 of the state constitution makes the governor "responsible for the faithful execution of the laws." There are many cases involving the executive's misapplying a statute, but few cases deal with situations where the executive simply fails to implement a statutory scheme that has been funded. However, in National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C.Cir. 1974), the court stated that it could issue an order requiring the president to perform a ministerial duty that was clearly required by law (in that case the granting of a pay raise), although the court, in fact, simply declared that the president should do so.

As previously pointed out, the attorney general has the discretion in a particular situation to take action or not to enforce a law, regardless of the role the governor may have played in the decision. Nonetheless, there are certainly situations when an action may be brought to challenge a decision of the executive branch that a law is unconstitutional and unenforceable on that ground. (O'Callaghan v State of Alaska, 914 P.2d 1250 (Alaska 1996) cert. denied 177 S.Ct 1690, 137 L.Ed.2d 818 (1997)), holding the state's blanket primary statute constitutional) Also, following the reasoning in the National Treasury Employees Union case, the court does have authority in some situations to order an agency to comply with a statute or perform a statutory duty. (Ellis v. city of Valdez, 686 P.2d 700 (Alaska 1984; AS 22.10.020(c); AS 22.10.050) However, whether the court would actually order the performance of a duty in any particular case is unknown. The court in the Ellis case specifically reserved its decision regarding the legal effect of a failure of an agency to carry out a mandate. *Supra*, footnote 8, page 706) Mandamus is not available to require the performance of a discretionary act.

(4) What is the difference between an elected attorney general and an appointed one?

Presumably, an elected attorney general would not necessarily be chosen by the governor and could not be removed from office at the will of the governor. This would, I think, change the relationship between the attorney general and the governor.

(5) May the legislature remove the attorney general from office?

The attorney general, along with all other civil officers, is subject to impeachment under Art. II, sec. 20 of the state constitution.

(6) How would I describe the duties of the attorney general to an audience who wonders what the duties are and what role the attorney general plays in protecting the rights of citizens?

I would point out the provisions of AS 44.23.010 and discuss the fact that the governor has the power to remove an attorney general from office.

TBC:lmb:  
99-010.lmb

**Subject: state attorneys general**

**Date: Fri, 12 Feb 1999 14:40:48 -0700**

**From: "Jennie Drage" <jennie.drage@ncsl.org>**

**To: <Mark\_Hodgins@legis.state.ak.us>**

Your request for information about state attorneys general was forwarded to me. The short answer is: most states elect their attorney general. The exceptions are Alaska, Hawaii, New Hampshire, New Jersey and Wyoming, where the AG is appointed by the governor; Maine, where the legislature elects the AG; and Tennessee, where the judges of the state supreme court appoint the AG.

Please feel free to contact me if I can be of further assistance.

\*\*\*\*\*

Jennie Drage  
Research Analyst, Legislative Management  
National Conference of State Legislatures

\*\*\*\*\*

# Alaska State Legislature

## Senate

**JERRY WARD**

State Capitol  
Juneau, AK 99801-1182  
Phone (907) 463-4940  
Fax (907) 463-3766

716 W. 4th Ave., Ste. 450  
Anchorage, AK 99501-2133  
Phone (907) 258-8183  
Fax (907) 258-0820

143 Main Street Loop  
Ketchikan, AK 99901  
Phone (907) 283-7996  
Fax (907) 283-3073



### SB 69

Advisory vote of the people to elect the Attorney General.

SB 69 allows an advisory vote of the people to begin the process of electing the State's Attorney General. Most states elect their Attorney General, there are currently five states where the governor appoints the AG; Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming. One state, Maine, where the legislature elects the AG; and Tennessee, where the judges of the state supreme court appoint the AG.

Many times in the history of the state of Alaska, the "appointed" attorney general has followed political whims of the Governor instead of working for the Alaskan people. Under the present governor appointee system, the governor has his own personal lawyer, who very clearly enforces laws as the governor directs, instead of the way it should be, with the Attorney General owing his allegiance and loyalty to the Constitution and the people of the State of Alaska.

The advantages are many for Alaskans with an elected attorney general:

- A Department of Law that serves only the people of Alaska.
- That stands up for Alaskans.
- Answers only to the Alaskan people.
- Interprets the Constitution, instead of the Governor.
- Works directly for Alaskans.

Past experience shows us that appointed attorney generals do not have Alaskan's Rights at heart. We have had attorney generals drop very important actions at the insistence of the Governor:

- Statehood Compact
- Subsistence Lawsuit
- State's Rights issues
- 90/10 Royalty NPRA

# FISCAL NOTE No. 1

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Bill Version: SB 69

(S) Publish Date: 2-17-99

Revision Date/Time (Note if correction) \_\_\_\_\_

Dept. Affected Office of the Governor

Title Advisory vote relating to the election of the attorney general

BRU Elective Operations

Sponsor Senator Ward

Component General and Primary

Requester Senate State Affairs

Component Serial No. 22

**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	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by Gail Fenumai  
Division Division of Elections

Phone 465-3935

Date/Time 2/16/99 2:24 PM

Approved by Gov. Lt. Governor Fran Ulmer  
Agency Office of the Lieutenant Governor

Date 2/16/99

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# Alaska State Legislature

## Senate

**JERRY WARD**

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145 Main Street Loop  
Kenai, AK 99611  
Phone (907) 283-7996  
Fax (907) 283-3075

February 17, 1999

Senator Robin Taylor, Chair  
Senate Judiciary Committee

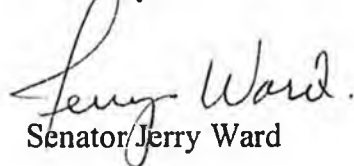
Senator Robin Taylor,

Please schedule SB 69 for a hearing in the Senate Judiciary Committee at your earliest convenience.

SB 69 will allow an advisory vote at the next state-wide election to determine whether the Attorney General should be elected by the people rather than appointed by the Governor.

Thank you for your consideration.

Sincerely,

  
Senator Jerry Ward

↘

↘

es

es

1-LS0463AH  
Ford  
3/15/99

**CS FOR SENATE BILL NO. 77(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS PETE KELLY, Ward**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act prohibiting certain civil actions against firearms or ammunition  
2 manufacturers and dealers."

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

4 \* **Section 1.** AS 09.65 is amended by adding a new section to read:

5       **Sec. 09.65.155. Civil liability of firearms or ammunition manufacturer or**  
6       **dealer.** A civil action to recover damages or to seek injunctive relief may not be  
7       brought against a person who manufactures or sells firearms or ammunition if the  
8       action is related to the lawful sale, manufacture, design, or marketing of firearms or  
9       ammunition. However, this section does not prohibit a civil action for breach of  
10       contract or breach of warranty *or mg. of design.*

11 \* **Sec. 2. APPLICABILITY.** This Act applies to a civil action that accrues on or after the  
12 effective date of this Act.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PETE KELLY

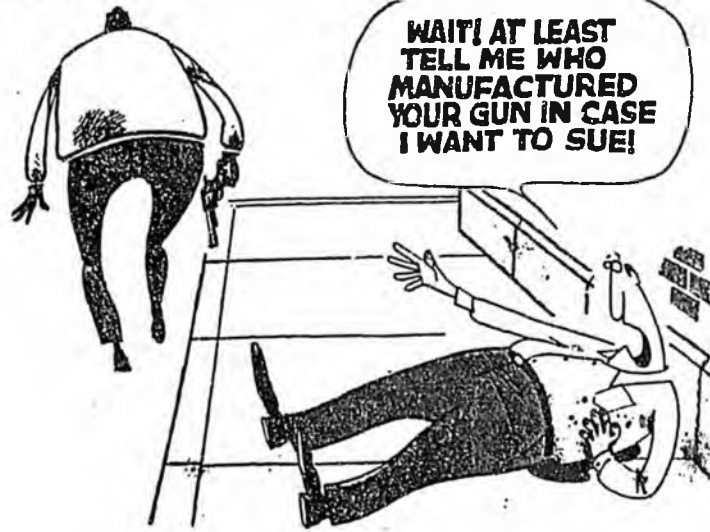
TO: SB 77

1 Page 1, lines 9 - 11:

2 Delete "of like character in its corporate name, and upon a cause of action accruing  
3 to it in its corporate character"

4 Insert "established by a municipality [OF LIKE CHARACTER IN ITS  
5 CORPORATE NAME, AND UPON A CAUSE OF ACTION ACCRUING TO IT IN ITS  
6 CORPORATE CHARACTER]"

SKILLY ©1999 SAN DIEGO UNION TRIBUNE  
COPLEY NEWS SERVICE



Cities who have filed suit:

1. New Orleans Filed suit in Nov. claiming the gun industry violated state laws by failing to install proper gun safety devices.
2. Miami-Dade Sued Jan. 27 to recover costs associated with gun violence. The suit claims handguns are not as safe as they could be and pose a public nuisance.
3. Atlanta Filed suit against 15 gun manufacturers and 2 trade associations, Feb. 4<sup>th</sup>, seeking damages for crime, deaths and injuries involving handgun use.
4. Bridgeport, CT The city filed suit against gun manufacturers on Jan. 27<sup>th</sup> to recover costs associated with gun violence. The suit claims handguns are not as safe as they could be and pose a public nuisance.
5. Chicago Filed suit in November claiming the gun industry poses a "public nuisance" by conspiring to provide guns to criminals by over supplying local markets. City seeking \$433 million in damages.

Cities contemplating lawsuits:

1. St. Louis Reportly plans to file suit in 1999.
2. Baltimore Considering litigation against gun manufacturers.
3. Philadelphia Considering litigation against gun manufacturers. Mayor Edward Rendell suggests a mass filing by as many as 100 cities in 1999.
4. Boston Reportly developing a lawsuit against gun manufacturers.
5. San Francisco Reportly developing a lawsuit against gun manufacturers.



MSNBC viewers' Top 10:  
Would you recommend this story to other viewers?  
not at all 1 | 2 | 3 | 4 | 5 | 6 | 7 highly



**NATIONAL RIFLE ASSOCIATION OF AMERICA**  
INSTITUTE FOR LEGISLATIVE ACTION  
555 CAPITOL MALL, SUITE 455  
SACRAMENTO, CA 95814  
(916) 446-2455

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.

# Gun suits dangerous and undemocratic

There is no end  
to the blame game

By JOHN CARLSON

SEATTLE—Two years ago, 71 percent of Washington state voters trounced a well-publicized gun-control measure (Initiative 676) that was marketed as a gun-safety measure but was actually intended to discourage the acquisition of handguns.

For the well-organized but shrinking gun-control lobby, it was a humiliating defeat because its previous inability to pass anti-gun laws in the Legislature was blamed on the "gun lobby." Yet when the final word on gun control was taken away from the politicians and given to the people, the voters opposed it by a larger proportion than the politicians.

Why? Because the anti-gun crowd nettled a sleeping giant—gun owners—who are as defensive about the Second Amendment as journalists are about the First Amendment.

Never in state history has such a wide and deep grass-roots presence made itself so visible. It created a tidal wave of opposition that no amount of money or elite endorsements could stop.

But now the gun-control movement thinks it can win without passing laws or winning elections. The strategy: bankrupt gun companies by suing them for the medical costs and monetary

damages of gun-related crime. The fewer guns being sold, the fewer firearms being bought. And fewer guns being bought means fewer guns being shot.

The idea is very appealing not only to outnumbered supporters of gun control, but also to trial lawyers, who see gun manufacturers as one more deep pocket to dive into. And urban politicians, including the mayors of Chicago; New Orleans; Bridgeport, Conn.; Philadelphia, and possibly Seattle find the idea enticing because it might create another revenue stream for the city while giving the politicians someone to blame for the failure of their own anti-crime policies.

The rationale for the suits is as follows: Cities that have tight gun-control laws (like Chicago) have nevertheless been overrun by guns that have been "oversupplied" to cities, counties and states with less restrictive laws in surrounding areas. These guns have been designed and crafted to appeal to criminal elements because, according to The New York Times, "Gun makers began making more powerful handguns to make up for stagnant sales, and these guns quickly became popular among criminals."

Question for The New York Times: When haven't guns been popular with criminals? And since when have criminals been able to buy guns from licensed dealers?

Blaming gun makers for gun-related crime is a novel theory. Let's use the same logic for automobile makers. They know that some of the cars they sell will, sooner or later, be driven by drunken drivers who injure someone. So why not hand the bill to Ford, Chrysler and GM? Or for that matter to liquor companies, breweries and wineries?

Sound like a stretch? Three years ago, while interviewing one of the attorneys suing the tobacco companies, I predicted it would be a matter of time before lawsuits were filed against booze makers for health-related expenses linked to alcohol abuse and gun companies for medical expenses related to gunshot victims.

No way, he assured me. The tobacco case was unique because the CEOs of big tobacco denied their products did any harm.

That distinction died quickly. Some of the same lawyers who faced down the tobacco companies in court are now going after the gun makers.

I'm no fan of cigarettes, but the precedent set in the tobacco case not only enables but encourages lawyers, politicians and activists to use taxpayer resources in court to bleed the makers of anything they happen to oppose in the name of protecting "public health." The result is either a far more expensive or otherwise less obtainable product for people to

choose. And that's what the people pushing such lawsuits want.

The end result is that more such suits will probably be filed simply because the lid wasn't slammed shut in this case. But the suit may have awakened another sleeping giant. National Rifle Association president Charlton Heston has announced that the NRA would team up with gun makers to fight back. And the Bellevue-based Second Amendment Foundation ([www.saf.org](http://www.saf.org)) has announced it will sue cities that sue gun makers.

In a country where less than 0.1 percent of all guns are used in any given year to commit armed crime—and where guns are brandished far more often to prevent violent crime than commit it—such lawsuits should be seen for what they are: a raid on democracy itself, with the legal system being used to short-circuit the right of people to do something the gun-control movement doesn't want them to do—buy a gun. That kind of paternalism is what inspired the Second Amendment (and the rest of the Bill of Rights) in the first place.

John Carlson, chairman of the Washington Institute for Policy Studies, a free-market research group in Seattle, writes for the News Tribune of Tacoma, Wash. This column was distributed by Scripps-McClatchy Western Service.

# News Release

## Second Amendment Foundation

12500 NE Tenth Place • Bellevue, WA 98005

(425) 454-7012 • FAX (425) 451-3959

**For Immediate Release**

**Contact: Alan Gottlieb (425) 454-7012**

**Joseph P. Tartaro (716) 885-6408**

**Prof. Daniel D. Polsby (312) 503-8955**

# **MAYORS FACE LAWSUIT BY GUN OWNER GROUP**

BELLEVUE, WA (December 9, 1998)-The Second Amendment Foundation (SAF), a gun owner advocacy and educational organization, notified the US Conference of Mayors in a faxed letter dated Dec. 8 that it plans to sponsor a "damage action" against the cities of Chicago and New Orleans for conspiracy to violate civil rights, abuse of process and undue burden on interstate commerce.

The Foundation's letter to J. Thomas Cochran, executive director of the US Conference of Mayors, said that a steering committee of distinguished law professors, who will serve without compensation, has been assembled as a response to the "frivolous suits" which New Orleans and Chicago filed recently against firearms manufacturers, their trade associations and federally licensed firearms dealers. SAF warned the mayors' conference on the eve of its scheduled Dec. 10 meeting in Chicago that the suit which it expected to file in Louisiana early next year will also name any other cities which follow the New Orleans and Chicago lead.

Noting that the mayors had invited lawyers involved in the suits against the firearms industry to address

the meeting, Alan M. Gottlieb, founder of the Second Amendment Foundation, encouraged the conference to also invite a rebuttal presentation by a member of the 12-member steering committee, Daniel D. Polsby, Kirkland & Ellis professor of law at Northwestern University.

"From coast to coast, noted law professors seem to agree with the many newspaper editorials which have suggested that the lawsuits filed by the cities of New Orleans and Chicago against firearms manufacturers and marketers are ill-conceived, ill-advised and totally without merit," said Gottlieb.

"Whatever problems the cities may have with the criminal and negligent misuse of firearms, their suits against the gun manufacturers make as much sense as suing the National Weather Bureau for the cost of storm damages," Gottlieb added.

Even newspapers and magazines which advocate strict controls over firearms and their purchasers have with unusual consistency questioned the advisability of the kind of suits that have been filed by the cities against the firearms industry. They see these as an attempt to pervert the concept of product liability as an extension of the arguments used in the state attorneys general suits against the tobacco industry.

"The nature and status of guns and tobacco are not analogous," said Joseph P. Tartaro, president of SAF. "Firearms have a significant beneficial use in our society beyond recreation, since independent research shows they are used over 2 million times a year to prevent or terminate predatory criminal assaults."

"The New Orleans and Chicago lawsuits are not only frivolous they are dangerous because they are an extension of legal and political buccaneering that will rape Americans of the means to self-defense while looting a legal industry."

"The Foundation's primary interest is to safeguard the traditional legal rights of law-abiding and peaceable American gun owners," Gottlieb said. "We are not industry advocates. Gun makers and sellers just happen to be the visible targets of the frivolous actions brought by New Orleans and Chicago. If these were standard product liability suits, we wouldn't have more than a passing interest in what the cities are attempting to do."

The law professors on the Foundation's steering committee for the lawsuit against the cities besides Prof. Polsby are: Steven Calabresi, professor of law, Northwestern University, Chicago; Robert A. Carter, professor of law and Judge Alexander P. Waugh Sr. scholar, Rutgers University-Newark; Robert J. Cottrol, professor of constitutional law and legal history, George Washington University, Washington, DC; Michael I. Krauss, professor of law, George Mason University, Arlington, VA; Gary S. Lawson, professor of law, Northwestern University, Chicago; Calvin R. Massey, Hastings College of Law, San Francisco; John McGinnis, Cardozo Law School, New York City; Glenn Harlan Reynolds, professor of law, University of Tennessee, Knoxville, TN; Charles E. Rice, professor of law, Notre Dame University, South Bend, IN; Larry Soderquist, professor of law and director of the Corporate and Securities Law Institute, Vanderbilt University, Nashville, TN; and George Strickler, professor, Tulane University Law School, New Orleans, LA.

The Second Amendment Foundation is a tax-exempt education, legal action and publishing group founded in 1974 and now has over 600,000 individual citizen supporters nationwide. It previously has funded successful firearms-related suits against the cities of Los Angeles, New Haven, CT, and San Francisco on behalf of American gun owners.

-END-



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Judiciary  
 Committee on SB 77 + HB 103 Dated 3/12/99  
Committee Name  
Bill / Subject

PLEASE Change SEC 2. ASCA 9.65.080 (B)  
 to An individual or entity may not. Being  
 (IE. Sinter of AK)

SIGNED:

 CHRIS

Testifier



Representing

1105 Bnd Ave FPKS / work 488-1885  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary Finance Com.  
Committee Name  
 Committee on SB 77 + HB 103 Dated 12 Mar 99  
Bill / Subject

*I concur with Noel Napollilli!!*

SIGNED:

*Lang M. Brown*  
 \_\_\_\_\_  
 Testifier

*TVSA/RIP*  
 \_\_\_\_\_  
 Representing

*1817 Central, Fairbanks, AK 99709 / 456-8190*  
 \_\_\_\_\_  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the JUDICIARY + FINANCE COMMITTEES  
 Committee Name  
 Committee on SB-77 + HB 103 Dated 3/12/99  
 Bill / Subject

PLEASE ACCEPT MY EMPORSEMENT OF SB 77. THIS BILL CAN PROTECT  
 MFERS + SELLERS IN LAWFULL SALES OF FIREARMS FROM THE DEVASTATING  
 EFFECTS THESE FRIVOLOUS LAWSUITS CAN BRING. THE PERSON WHO MISUSES A  
 FIREARM IS WHO NEEDS TO BE TARGETED IN THE COURTS, NOT THE SELLER  
 OR MANUFACTURER. WE NEED TO CLEARLY ESTABLISH THAT A PERSON MUST TAKE  
 RESPONSIBILITY FOR HIS ACTIONS AND NOT TRY TO SHIFT THAT RESPONSIBILITY TO  
 THE SELLER OF AN INANIMATE OBJECT, PARTICULARLY WHEN THE MANUFACTURE  
 AND SALES ARE BEING DONE IN A LAWFULL MANNER. IF THE COURTS CANNOT  
 RECOGNIZE THIS BASIC FUNDATION OF A FREE SOCIETY, THEN THE LEGISLATURE  
 MUST ACT TO PROTECT THESE FREEDOMS. I BELIEVE THAT TIME HAS COME  
 AND I ASK THAT THE LEGISLATURE SEE SB 77 THROUGH TO FRUITION, EVEN IF  
 IT REQUIRES OVERRIDING THE GOVERNOR'S VETO!

SIGNED:

[Signature]  
 Testifier

ALASKA 2<sup>ND</sup> AMENDMENT COALITION  
 Representing

251 NAPOLI LN, FOLS 99012 457 6418  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary Cmte  
Committee Name  
 Committee on SB 77 + HB 103 Dated 3/12/99  
Bill / Subject

- ① Modify line 11 to include "Negligent design" in addition to "breach of contract or breach of warranty." Note that a Ford Pinto was "lawfully" manufactured; solol. Consider gross Negligence as well.
- ② Define "person" at end of line 8. Broaden it.

SIGNED:

Ward Mercedes  
 Testifier

Self  
 Representing

PO Box 71309 F6ks, AK 99707 (907) 452-5400(w)  
 Address / Phone Number

**Testimony on SB77 -- by Richard Bishop for the Alaska Outdoor Council,  
March 12, 1999, Senate Judiciary Committee.**

Thank you. I'm Dick Bishop, Vice President of the Alaska Outdoor Council, on whose behalf I am testifying. On March 7, 1999 delegates to the Alaska Outdoor Council's statewide annual meeting voted unanimously to support SB 77.

The Outdoor Council strongly objects to the idea that gun manufacturers or dealers are responsible for the costs resulting from irresponsible, and usually illegal, uses of firearms.

It appears that the currently developing fad of cities suing gun makers or dealers for expenses resulting from gun-related injury or death is at best passing the buck by blaming someone else for their problems. At worst, it appears to be a cynical and dishonest ploy to profit by exploiting the fears and pain of the public, which are caused by tragedies relating to some uses of guns.

Gun control advocates urge such lawsuits for their own <sup>purposes,</sup> and promote their views through sensationalized publicity that most often misrepresents the facts relating to injuries and deaths involving firearms.

The lawsuits seeking to penalize gun makers and dealers suit their purposes perfectly—they are high profile in the media, and lend undeserved credibility to gun control advocates' claims.

What the municipalities, gun control advocates, and even many individuals traumatized by gun-related incidents often refuse to recognize is that the trauma-causing gun uses are most frequently illegal, immoral, unethical and anti-social.

Somehow these towns, groups, or individuals conclude that someone else should be responsible for the criminal and/or irresponsible uses that should be dealt with by the towns, groups, and individuals themselves.

I well remember the case years ago when a "wannabe" fast draw cowboy shot himself in the leg or foot. I was astonished when he sued the gunmaker for damages, saying the gunmaker shouldn't have made and sold a gun he could shoot himself with. I was even more amazed when he won something like a million bucks. Current lawsuits make about as much sense.

Please pass this bill to head off at least some of this nonsense. Thank you.

119 N. Cushman St.  
Fairbanks, AK 99701  
Phone: 452-4448  
Fax 456-3346



# Fax

**To:** Senate Judiciary Committee

**From:** Fairbanks Legislative Information Office

Senator Robin Taylor

**Fax:**

**Date:** March 12, 1999

**Phone:**

**Pages:** 5

**Re:** Written Testimony for SB 77

**CC:**

Teleconferenced 3/12/99

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

**Comments:** The originals will be mailed to your office. Thank you

Fran/Fbx LIO

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 77

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Civil actions against firearm manufacturers and dealers</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Sen. P. Kelly</u>	Component	<u>Trial Courts</u>
Requester	<u>Senate Judiciary</u>	Component Serial No.	<u>769</u>

**Expenditures/Revenues** (Thousands of Dollars)

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: None

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney  
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director  
 Agency: Alaska Court System

Phone: 264-8265  
 Date/Time: 3/5/99 2:18 PM  
 Date: 3/5/99

# Alaska State Legislature

SENATOR

PETER KELLY

Mailing Address:

119 N. Cushman, Suite 201

Fairbanks, Alaska 99701

Senator\_Pete\_Kelly@legis.state.ak.us

(907) 456-8161

While in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-2327

Senate District P

## Senate

### Sponsor Statement

#### Senate Bill 77

### **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 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.

**Subject: PRESS RELEASE: Sen. Pete Kelly/Gun Industry Suits**

**Date: Tue, 16 Feb 1999 14:44:29 -0900**

**From: Maggie\_Wall <Maggie\_Wall@legis.state.ak.us>**

**To: lsncmlw+senatemajority@legis.state.ak.us**

For Immediate Release: February 16, 1999      Contact: Senator Pete Kelly (907) 465-2327

**Senator Pete Kelly Announces Legislation Protecting Gun Industry From Frivolous Lawsuits**

(Juneau)—In light of a recent federal court jury decision, and in response to early support from Alaskans on this issue, Senator Pete Kelly (R-Fairbanks) is writing legislation that would prohibit frivolous lawsuits against the gun industry.

"Companies and small businesses should not be held liable for the unlawful actions of individuals no more than car companies should be held responsible for deaths caused by drunk drivers," said Kelly.

Responding to his own convictions and to constituent requests, Senator Kelly is drawing up legislation that would bar local political subdivisions of the State of Alaska from suing gun manufacturers for damages from gun violence.

A federal jury recently found 15 of the nation's largest handgun manufacturers negligent in lawsuits brought after criminals used guns.


"These lawsuits are an abuse of the legal system," said Sen. Kelly. "Gun manufacturing is a lawful enterprise producing quality products lawfully and safely used by hundreds of thousands of American citizens for hunting, sport, recreation and protection," said Sen. Kelly.

"These kinds of anti-business lawsuits will endanger small businesses everywhere, said Sen. Kelly. "Where will we draw the line? Will local ice cream parlors be sued for serving a product linked to health risks and costs associated with gaining weight?" Sen. Kelly said.

"Alaska encourages business. We should protect businesses from frivolous lawsuits," Kelly said.

# # #

Broadcasters Note: Actualities can be reached by calling 1-800-478-6540.

	<u>Guns Pete Kelly 02-16-99.doc</u>	<b>Name:</b> Guns Pete Kelly 02-16-99.doc <b>Type:</b> Winword File (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message
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FOR IMMEDIATE RELEASE:

February 8, 1999

GEORGIA SENATE PASSES H.B. 189

First of its kind legislation protecting lawful commerce and gun owners' rights seen as model for the nation.

(WASHINGTON, DC) -- The Georgia State Senate passed H.B. 189 today with an overwhelming majority (44-11). This legislation will protect lawful commerce and the rights of gun owners in Georgia by blocking frivolous local lawsuits against the firearm industry.

NRA chief lobbyist James J. Baker commented, "Passage of this bill once again reaffirms that the American people and their elected representatives recognize the fact that firearms are unique among consumer products."

H.B. 189 will extend the statute requiring uniform firearm laws throughout the state to include lawsuits against the firearm industry. The ability to bring government sponsored lawsuits against gun manufacturers will be reserved solely to the state government.

"No other consumer product is protected by the U.S. Constitution and forty-four state constitutions, including Georgia's, and, therefore, the proper places for the debate over the right to bears arms are the U.S. Congress and state legislatures," said Baker.

"We believe the lawsuits being brought against the gun industry by certain big cities are frivolous and without merit. However, we recognize, if left unchecked, that the burden of simply defending against them until they can be dismissed could have a real impact on the ability of Americans to lawfully acquire firearms for recreation and self-defense. NRA will be working with legislators nationwide to spread this ground breaking legislation and the protection it provides."

H.B. 189 now returns to Georgia's House of Representatives for its consideration of slight technical changes made by the Senate.

==+==+==+

This information is provided as a service of the National Rifle Association Institute for Legislative Action, Fairfax, VA.

This and other information on the Second Amendment and the NRA is available at: <http://WWW.NRA.Org>

1. Jenkins 110th  
4. Walker 141st

2. Smith 109th  
5. Day 153rd

3. Twiggs 8th  
6. Lane 146th

HB 189

HB 189/AP

H. B. No. 189 (AS PASSED HOUSE AND SENATE)

By: Representatives Jenkins of the 110th, Smith of the 109th, Twiggs of the 8th, Walker of the 141st, Day of the 153rd and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 16-11-184 of the Official Code of  
2 Georgia Annotated, relating to regulatory authority of local  
3 political subdivisions over firearms and limitations  
4 thereon, so as to reserve to the state the right to bring  
5 certain civil actions against firearms or ammunition  
6 manufacturers, trade associations, and dealers; to provide  
7 legislative declarations; to provide for legislative intent;  
8 to provide for applicability; to provide an effective date;  
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Code Section 16-11-184 of the Official Code of Georgia  
13 Annotated, relating to regulatory authority of local  
14 political subdivisions over firearms and limitations  
15 thereon, is amended by striking subsections (a) and (b) and  
16 inserting in lieu thereof the following:

17 "(a)(1) It is declared by the General Assembly that the  
18 regulation of firearms is properly an issue of general,  
19 state-wide concern.

20 (2) The General Assembly further declares that the  
21 lawful design, marketing, manufacture, or sale of  
22 firearms or ammunition to the public is not unreasonably  
23 dangerous activity and does not constitute a nuisance  
24 per se.

25 (b)(1) No county or municipal corporation, by zoning or  
26 by ordinance, resolution, or other enactment, shall  
27 regulate in any manner gun shows, the possession,  
28 ownership, transport, carrying, transfer, sale,  
29 purchase, licensing, or registration of firearms,  
30 components of firearms, firearms dealers, or dealers in  
31 firearms components.

32 (2) The authority to bring suit and right to recover  
33 against any firearms or ammunition manufacturer, trade

H. B. No. 189

-1-

HB 189/AP

1 association, or dealer by or on behalf of any  
2 governmental unit created by or pursuant to an Act of  
3 the General Assembly or the Constitution, or any