

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10074 SENATE JUDICIARY

4 department, agency, or authority thereof, for damages,
5 abatement, or injunctive relief resulting from or
6 relating to the lawful design, manufacture, marketing,
7 or sale of firearms or ammunition to the public shall be
8 reserved exclusively to the state. This paragraph shall
9 not prohibit a political subdivision or local government
10 authority from bringing an action against a firearms or
11 ammunition manufacturer or dealer for breach of contract
12 or warranty as to firearms or ammunition purchased by
13 the political subdivision or local government
14 authority."

15 SECTION 2.

16 The General Assembly intends that paragraph (2) of
17 subsection (a) of Code Section 16-11-184 as enacted by this
18 Act shall embrace the rule of law in Division 1 of Rhodes v.
19 R. G. Industries, Inc., 173 Ga. App. 51 (1984).

20 SECTION 3.

21 This Act shall apply to any action pending on or brought on
22 or after the date this Act becomes effective.

23 SECTION 4.

24 This Act shall become effective upon its approval by the
25 Governor or upon its becoming law without such approval.

26 SECTION 5.

27 All laws and parts of laws in conflict with this Act are
28 repealed.

H. B. No. 189

-2-

Previous full text revisions: 01/22/99 , 01/29/99 , 02/02/99

HB 189

Firearms; certain civil actions;
reserve right to state

- | | | |
|------------------|----------------|---------------|
| 1. Jenkins 116th | 2. Smith 109th | 3. Twiggs 8th |
| 4. Walker 141st | 5. Day 153rd | 6. Lane 146th |

House Comm: PubS	/	Senate Comm: Pub S	/
House Vote: Yeas 146	Nays 25	Senate Vote: Yeas 44	Nays 11

House	Action	Senate
1/25/99	Read 1st Time	2/1/99
1/26/99	Read 2nd Time	2/4/99
1/27/99	Favorably Reported	2/3/99
Sub	Committee Amend/Sub	Sub
1/29/99	Read 3rd Time	2/5/99
1/29/99	Passed/Adopted	2/8/99
CS	Comm/Floor Amend/Sub	CS
2/9/99	Amend/Sub Agreed To	
2/9/99	Sent to Governor	
2/9/99	Signed by Governor	
4	Act/Veto Number	

Tabled 2/5/99
Taken from Table 2/8/99

Code Sections amended: 16-11-184

Electronically recorded votes

Senate Votes

- 2/5/1999 11:54A MOTION TO TABLE
- 2/8/1999 10:39A MOTION TO REMOVE FROM THE TABL
- 2/8/1999 11:59A ADOPTION OF AMEND BY THE SENAT
- 2/8/1999 12:00P ADOPTION OF THE COMMITTEE SUBS
- 2/8/1999 12:02P PASSAGE BY SUBSTITUTE

Subject: [REDACTED]

Date: Thu, 04 Mar 1999 19:41:57 -0900

From: [REDACTED]

Organization: [REDACTED]

To: [REDACTED]

This is the type of thing that sends chills down my spine and call for SB 77.

Johnny

Senate Bill Designed To Spur More Suits Over Guns

Fox News

March 4, 1999 Reuters

WASHINGTON - Three Senate Democrats introduced legislation Thursday designed to give cities, counties and states more financial incentives to sue gun manufacturers.

The bill offered by Sens. Frank Lautenberg of New Jersey, Dick Durbin of Illinois, and Charles Schumer of New York, would let localities challenge gunmakers in court for federal as well as local costs associated with treating crime victims.

Examples of federal costs that cities could recover would be disability, unemployment, Medicaid and other aid to shooting victims.

"If enough cities successfully sue the industry it could be brought to its proverbial knees," Lautenberg said. He said the bill would fortify cities that already have filed gun suits and encourage more cities to do the same.

The bill comes on the heels of another Democrat-backed bill sponsored by New Jersey Sen. Robert Torricelli and Rhode Island Rep. Patrick Kennedy.

That bill would allow the U.S. government to regulate the manufacture, sale and distribution of guns like it does toys, toasters and other every day consumer products.

A host of proposals to restrict guns have died in Congress amid fierce Republican opposition since the 1994 passage of the Brady law requiring federal background checks for anyone purchasing a weapon from a licensed gun dealer.

Rep. Bob Barr, a Georgia Republican, blasted the Lautenberg/Durbin/Schumer bill and two mayors who backed it at Thursday's press briefing - Atlanta's Bill Campbell and Miami-Dade Mayor Alex Penelas.

Both mayors have filed suit against the gun industry.

"Doubtlessly, this promise of more easy money is the reason why several big-city mayors are lining up to support this bill," charged Barr, whose state recently passed a law that prevents any of its local governments from suing the gun industry.

Lautenberg struck out at Barr and the National Rifle Association (NRA) for trying to preempt cities' efforts to seek

compensation for costs related to gun violence.

"It is wrong for the NRA or any of their agents to try and preempt these suits," Lautenberg said. "I will use any and all possible means to kill federal legislation blocking the suits in the United States Senate."

"The gun lobby right now is trembling in its boots," Schumer added.

"The problem for the gun lobby is that there are 50 states and 440 large cities with big crime problems and even the NRA cannot get their hooks into every state legislature to bar their right to seek damages," Schumer said.

Under the Lautenberg/Durbin/Schumer bill, localities recovering federal dollars could keep two-thirds of the federal portion, with one-third of that share going toward law enforcement, one-third toward education and one-third toward discretionary spending.

The other third of the federal portion would be returned to the U.S. for crime prevention, injury prevention research and similar programs, under the bill, dubbed "The Gun Industry Accountability Act."

gun collector and outdoorsman. Fitz-Randolph also had a long history of competitive shooting. He has won numerous titles in International Pistol, Conventional High Power, and High Power Rifle Team. Fitz-Randolph held NRA instructor certifications in Rifle, Pistol, Shotgun, and Rifle and Pistol, and a Coach's Certification. He was a member of the International Shooter's Association, a Class A Judge, was a Block Captain in the 1984 Olympics, served as Range Officer at the Championships of the Americas, and for many years was a volunteer Line Officer. He was a member of the Classification Committee of the U.S. Invitational National Championships. He also organized junior and junior marksmanship competitions in high power rifle, small bore rifle and pistol competitions.

Fitz-Randolph is a member of the Board of Directors of the United States Shooting Team, Inc.; President of the United Sportsmen of Florida, the Florida Legislative lobbying organization—an affiliate of the NRA ILA; a Director of the Florida State Smallbore Rifle Association; incorporating director, Legislative Committee chairman and charter life member of the formed Florida Sport Shooting Association, Inc.; a Life Member of the Texas State Rifle Association and the California Rifle and Pistol Association. He was founder of Florida's Port Malabar Rifle and Pistol Club and had been its Executive Officer, Vice-President and President.

Fitz-Randolph is survived by his wife, Jerry Henderson Fitz-Randolph; two sons, Roderick M. Fitz-Randolph, Jr., of Tampa, Florida, and Kurt H. Fitz-Randolph of Stockbridge, Georgia, two sisters and three grandchildren.

Revolver Distinguished
Championship, Shotgun
Championship

September 23: Stock Semi-Automatic Pistol Championship, Semi-Automatic Pistol Distinguished Championship, Shotgun Championship

September 24: Two- and Four-Man Revolver & Semi-Automatic Pistol Team Championships, World Two-and Four-Man Team Championships, Shotgun Championship

Voters Reject Lawsuits Against Gunmakers

In a nation wide survey of registered voters conducted by the American Firearms Council, 92 percent of registered voters polled think that cities or states should not sue gunmakers as a means of stopping violence. Sixty-seven percent say enforcing current laws against using a firearm is more effective in addressing criminal violence than is limiting the number of firearms an individual may purchase. Public Opinion Strategies of Alexandria, Virginia conducted the survey from October 3-6. The survey polled 800 registered voters nationwide and has a margin of error of plus or minus three percent.

World Long Range Blackpowder Championship Coming to Quantico,

Quantico Marine Corps Base in Virginia will host the World Long Range Blackpowder Championships August 23-29, 1999 at the Calvin A. Lloyd Rifle Range. Individuals from a dozen countries will be competing in this championship. Practice will take up the first two days of the match. Individual competition will take place the next two days and the last two days will be an eight-member team match.

"Shooters News"
Feb. 1999
page 3

Gun lobbyist expected to resign after meeting with opponents

The Associated Press

ATLANTA—In trying to fight lawsuits against the gun industry, lobbyist Richard Feldman may have created too many enemies by trying to make a few friends.

Feldman is expected to resign this week as executive director of the American Shooting Sports Council, forced out by gun makers who perceive him as too conciliatory toward cities suing the industry.

Feldman met last week with attorneys representing New Orleans—the first city to sue the industry. Some saw the meeting as a step toward settling, which many firearms manufacturers have vowed will never happen.

"The notion that the association was caving into demands is absolutely ridiculous," said Richard Rucker, director of governmental affairs for the council. "If Richard does go, I think it will be just a difference of opinion over the direction of where the industry needs to go."

The council's board took no action during a teleconference meeting Tuesday, but another meeting was scheduled for today.

Feldman did not return several phone calls Tuesday, but was quoted in The Wall Street Journal as saying his status was "subject to change within the next 24 hours to 48 hours."

Some industry insiders say

Feldman was ousted because of his aggressive personality, not the New Orleans meeting. One gun company official, speaking on the condition of anonymity, said Feldman's habit of "grandstanding" on positions not approved by most council members spelled his doom.

The decision to oust Feldman reportedly came at the request of Jim Baker, the chief lobbyist for the National Rifle Association, after several clashes over policy.

"I can say we had differences on the issues relative to political and legislative strategy, but that's about as much as I want to say," Baker said.

Targeting Gun Makers With a Cigarette Strategy

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

by Roberto Suro
Washington Post Staff Writer

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

New Orleans and Chicago led the way with suits filed last fall. Boston, San Francisco, Bridgeport, Conn., and Miami-Dade have announced they are putting together legal teams to develop complaints. And Philadelphia Mayor Edward G. Rendell has proposed a simultaneous filing by as many as 170 cities on the same day sometime next year.

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

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

"The tobacco suits prompted some new strategic thinking," says Kristen Rand, director of federal policy at the Violence Policy Center, a Washington, D.C.-based research and advocacy group. "Both tobacco and gun manufacturing have largely escaped regulation in the '80s, and now the justice system has emerged the best way to ensure that they are held accountable for their products."

Gun manufacturers, like cigarette makers, have successfully defended themselves against numerous lawsuits brought by individuals. But gun control advocates hope to end that streak by bringing the public sector's vast resources and powerful new legal arguments into the battle.

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

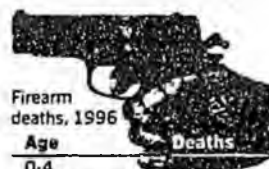
"The gun manufacturers are not nearly as big, as rich, or as unified as the tobacco people, and so they may well buckle when they have to fight lawsuits in every major city in America simultaneously," says a top aide to a big-city mayor who asked not to be named.

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

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

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

In the Line of Fire



Firearm deaths, 1996	Deaths
Age	
0-4	
10-14	510
15-19	4,950
20-24	4,816
25-29	2,959
30-34	3,414
35-39	3,318
40-44	2,746
45-49	2,289
50-54	1,693
55-59	1,317
60-64	1,077
65-69	1,191
70-74	1,161
75-79	1,027
80-84	785
85+	546
Unknown	28
Total	34,040

SOURCE: National Center for Health Statistics

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

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

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

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

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

"We are going to get into a phase of discovery, just as with tobacco, that will open the gun industry to a kind of scrutiny that it has never experienced," says David Kairys, a professor of law at Temple University, who helped Chicago develop its lawsuit and is now working with other cities.

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

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

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

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

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

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

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

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

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

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

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

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

tobacco suits also argued that manufacturers misled smokers both about those dangers and about the addictive powers of nicotine, which furthered the harm and diminished the consumer's ability to avoid it.

There is no chemical addiction when it comes to guns. And there is no secret they are dangerous. And courts have repeatedly rejected claims that guns are somehow defective when they fire bullets.

"No one has been injured when using a gun properly," says Ricker, expressing the industry view that it cannot be held liable for injuries that result from crimes or accidents.

So far, two legal theories have been developed to try to get around these roadblocks and others are under consideration.

THE NEW ORLEANS SUIT ARGUES THAT under Louisiana's unusually strict product liability law, guns are "unreasonably dangerous" because manufacturers have failed to take steps that would prevent the guns' use by children and other unauthorized users. For example, the suit alleges that manufacturers have failed to include adequate warnings of the risks that minors could gain access to weapons or instructions on how to store a gun to avoid that risk.

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

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

The New Orleans suit names 15 major handgun manufacturers, three industry trade associations and several local gun dealers as defendants. Without specifying an amount, the suit seeks damages to cover the city's costs for "police protection, emergency services, medical care, facilities and services, as well as lost tax revenues due to defendants' products and actions."

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

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

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

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

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

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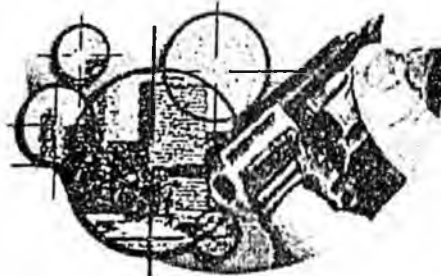
U.S. mayors' group pushing for gun violence law

January 28, 1999

Web posted at: 10:59 p.m. EST (0359 GMT)

In this story:

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- [Lawyers gunning for gun makers](#)
- [Negotiating with the industry](#)
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WASHINGTON (CNN) -- The U.S. Conference of Mayors announced Thursday that it was working with senators to legislate against the flow of guns into the hands of criminals and children.

"When I was growing up, you got in a fight and went home with a bloody lip. These days, the kids have guns, and we have to do something about it," said Scott King, mayor of Gary, Indiana.

Philadelphia Mayor Edward Rendell, who heads the group's gun violence task force, said the gun violence bill would limit the number of handguns a legitimate buyer could purchase monthly to only one.

The mayors also want to close the "gun show loophole," which Rendell said lets gun shows sell firearms unlicensed to people, including minors or felons, without background checks.

And the leaders of U.S. cities would put guns under the scrutiny of the Consumer Product Safety Commission (CPSC).

Gun safety technology

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The legislation seeks \$100 million over four years to develop technology to personalize handguns so they could be discharged only with the buyer's palm print.

"That person cannot go in and buy 15 guns for resale, because they would be set to that purchaser's own fingerprints," Rendell said.

Rendell said the mayors were working with Sen. Frank Lautenberg, D-New Jersey, Sen. Charles Schumer, D-New York, Sen. Dianne Feinstein, D-California, and Sen. Richard Durbin, D-Illinois.

Lawyers gunning for gun makers

A day earlier, Miami and Bridgeport, Connecticut, sued gun manufacturers in an attempt to recover the costs of gun violence.

Chicago and New Orleans filed their legal challenges to gun makers last year. Chicago is seeking \$433 million from the gun industry, accusing it of "flooding" the city with illegal guns, said Mayor Richard Daley.

More cities are expected to file similar lawsuits this spring, and some mayors have explored the possibility of a multicity lawsuit. But the mayors said the maze of jurisdictions and differing state laws made it unlikely they would file a unified suit.

"But the bottom line is every mayor wants to make their city safer," said Detroit Mayor Dennis Archer.

Government statistics show guns were used in 13,262 homicides and 18,232 suicides in 1996.

Negotiating with the industry

The mayors are also negotiating with gun makers about providing safety devices such as gun locks and about limiting the number of guns manufactured.

But Rendell accuses the industry of stalling.

"All we hear is the usual stuff about, 'We need more time to examine your proposals,'"



BACKGROUND:

- **CNN's Allan Dodds Frank examines the municipal movement against guns**
Windows Media: 28K 80K

- **Targeting guns at the source**

TIMELINE:

- **Guns and the Law**

INTERACTIVE MAPS:

- **Cities vs. Guns**
- **Gun laws by state**

MESSAGE BOARD:

- **Who's responsible for gun violence?**

OTHER SITES

POLL:

Should gun manufacturers be held liable for gun violence?

Yes

Rendell said. "That's why we need to fight this battle on different fronts. We can't put all our eggs in the lawsuit basket."

- No
- Sometimes

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Jack Adkins, a spokesman for the American Shooting Sports Council Inc., which represents gun makers, blamed the mayors, saying they were dragging out negotiations.

"When we thought we had some issues settled, we got a new list of demands," Adkins said. "It's the mayors who are playing games here."

The Associated Press and Reuters contributed to this report.

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- [Shooting victims' suit against gun industry opens in New York](#) - January 6, 1999

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Conn. Mayor to Sue Gunmakers

By David Segal
 Washington Post Staff Writer
 Wednesday, January 27, 1999; Page A4

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[Handgun Wholesalers Case Dismissed](#)

BRIDGEPORT, Conn.—To revive this once bankrupt riverside city, Mayor Joe Ganim has razed a crime-plagued housing project and built a minor-league baseball park in the nearly abandoned downtown. Now, the 39-year-old maverick is on the verge of what could be his boldest -- or most desperate -- measure yet.

Ganim is about to accuse the nation's gunmakers of negligently pumping a flood of firearms into the city's blighted African American and Latino neighborhoods, places where the weapons are bound to be used for criminal ends, he says.

It's a novel legal argument, accompanied by an audacious demand. In a suit scheduled to be filed today, Bridgeport will seek \$100 million from gun companies to compensate the city for years of depressed property values in minority neighborhoods and for the plunge in tax revenue caused by a steady exodus of businesses.

"It doesn't take a genius to know which neighborhoods are being hurt by the oversaturated gun market," said Ganim, a scrappy 5-foot, 5-inch former attorney. "We think there's a corporate responsibility here."

Ganim's theory is described by law professors as a stretch, though hardly a sure-fire loser. After all, tobacco litigation seemed no less a longshot three years ago, and that has netted states more than \$200 billion.

At minimum, Bridgeport's argument will be a source of migraines for gun company executives in coming months. Other cities, such as Gary, Ind., have signaled an interest in filing suits using an identical approach. Ganim and gun control advocates predict that 50 other cities eventually could file similar cases and may unveil them on the same day.

For the gun industry, it's shaping up as a potentially nightmarish public relations problem -- and that is precisely the mayors' goal. By tossing race into the already combustible mix of lawyers and guns,

Ganim and others are not so subtly suggesting that the \$3 billion-a-year gun industry is exploiting minorities and callously allowing firearms to waylay urban centers. Proponents of the litigation believe that the very suggestion might be incendiary enough to produce a hefty settlement without a lengthy court battle.

New Orleans and Chicago have filed separate lawsuits against gun manufacturers, but left race out of it, asking only for money to cover medical and law enforcement expenses allegedly incurred by guns.

The mayors involved say they are trying to reduce crime. And like the cigarette suits, one aim is to achieve through the courts what legislatures have been unwilling to do: impose more restraints on a politically powerful industry. The possibility of some glory and badly needed funds doesn't hurt either. Attorneys general scored political points, raised their profile and landed millions of dollars for states by suing cigarette companies. A growing number of mayors believe it's their turn.

Already, gunmakers are calling it a shameless shakedown, griping that these leaders are suing to raise money for urban-renewal projects and to win national attention to enhance their careers. Not so coincidentally, the Bridgeport suit is being filed right before the annual Conference of Mayors meeting this week in Washington, where gun litigation will be a hot topic.

Gun industry officials are promising an all-out fight, denouncing the imminent Bridgeport litigation and any copycats as cynical ploys based on shoddy reasoning. The property value argument, they say, contains more than a hint of elitism, carrying the implication that minorities can't be trusted with a legal product. And if Bridgeport prevails, they say, ultimately gun prices will rise, making weapons unavailable to those who need them most -- poor people in violent neighborhoods.

"It's absolutely ridiculous," said Bob Ricker, a spokesman for the American Shooting Sports Council. "What the mayors are saying is 'Let's tarnish the industry's image, let's play the race card.' These guys will throw anything imaginable up there and hope the world buys this thing."

Weapons were both the doing and undoing of modern Bridgeport, a city of 143,000 once dubbed by a former mayor as the "armpit of New England." For decades, it was home to defense companies including Remington and Sikorsky, which cranked out components for bombs and ammunition for the military during World War II and after. But in the 1980s, crack cocaine arrived and crime sent many companies packing.

By the 1990s, the dwindling police force drove dilapidated cars.

Three square blocks around Father Panik Village, a housing project in the town's East Side, were the scene of one-fourth of the state's homicides. In 1991 Ganim's predecessor filed to place Bridgeport under Chapter 11 bankruptcy protection.

Though the city no longer resembles a war zone, it is far from healthy. Still, many residents are skeptical about Ganim's lawsuit, even if it raises badly needed cash.

"Criminals are criminals," said Aaron Sarfati, owner of Contempo Fashions, a store selling sneakers and hip-hop clothing on run-down Main Street. "If they don't use guns, they'll use knives. They'll use rocks. Guns are just a tool."

"What they ought to do is close down pawnshops in these neighborhoods," said Jose Cotto, a 22-year-old Contempo clerk. "If all these people who steal to get money for drugs didn't have a place to sell stuff, there'd be less crime."

In spite of such sentiments, Bridgeport and other cities are banking that hometown juries will be fed up enough to hold gunmakers financially liable. The industry is sure to file motions before judges to dismiss these cases on summary judgment, arguing that they are based on a legal theory that is too far-fetched to deserve consideration.

"Two years ago I would have said that this is unusual to the point of bizarre," said Gary Schwartz, a tort professor at UCLA Law School. "But the success of the tobacco case has made me wary of dismissing things just because they seem unusual."

To win, the mayors will have to argue that manufacturers could have taken steps to prevent people from bringing weapons into minority communities. That's because a key component in tort cases is proving that defendants ignored safety measures that could have stopped alleged injuries. Short of metal detectors on street corners, it's hard for some legal experts to envision what those precautions would be.

Ganim also must argue that gunmakers are a "proximate cause" of lost property values, meaning that they were close enough to the chain of events leading to the loss to be held responsible for it. That, too, will be a challenge, as gunmakers say their links to muggers are no closer than those of match manufacturers to arsonists. None of these problems, though, is necessarily fatal, legal experts contend. Common law evolves and responds to economic and social policy questions of the day, said Steven Croley, a tort professor at the University of Michigan Law School. If Americans believe that gunmakers and buyers should pitch in for the economic impact of their actions, the law eventually will reflect that sentiment through judicial decisions and jury verdicts.

"If you pay \$100 for a gun and the total costs of it are actually \$200 -- \$100 for the weapon and \$100 in losses to the neighborhood -- then we have a serious problem," Croley said. Gunmakers counter that it's unfair to saddle them and law-abiding customers with the costs of crime. It's impossible, they say, to isolate the various factors that lead to a mugging, for example. And jacking up gun prices will mean that only rich people in gated communities will be able to afford them, not single mothers in housing projects who need protection.

Said ASSC spokesman Ricker, "If you look at the policy implications of Bridgeport's claim, what they're saying is that wealthy people should be able to buy guns and poor people shouldn't."

In Ganim's view, he's merely suing for peace, and he's already talking like a man angling for a settlement.

"I sent a letter to a bunch of gunmakers inviting them to avoid the expense of litigation," he said. "So far, all I've gotten is snide and callous responses."

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Subject: Preparing to combat the Anti-gun Lobby

Date: Fri, 19 Feb 1999 09:40:36 -0900

From: "Fred H. Valdez" <fred-h-valdez@email.msn.com>

To: <Senator Pete Kelly@legis.state.ak.us>

Dear Senator,

Several article of a similar slant have appeared in the media in just the past week.

Perhaps you might gain some insight into their tactics so as to be prepared.

I think you will find that the MSNBC poll results are interesting but you will not see them published in the media.

Fred H. Valdez

Opinions



Lan Chi Lam / MSNBC

Using the courts for gun control

New tactic: Suing gun companies for damage

By Bruce
THE



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Opinions



Lin Chen Lam - MSNBC

Using the courts for gun control

New tactic: Suing gun companies for damage

By Bruce Shapiro
THE NATION

Feb. 18 — A short walk from my home in New Haven stands the farm of that prototypical Connecticut Yankee, Eli Whitney. In 1793, young Whitney conceived his famous cotton gin after watching a plantation-owning friend's slaves slowly pick over the crop. Whitney's successful design was so rapidly poached by better-financed competitors that he spent the next five years embroiled in patent lawsuits and staving off bankruptcy. So in 1798 Whitney hit on a bold new scheme: interchangeable parts for muskets.

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THROUGH THOMAS JEFFERSON, he secured a contract from Congress for an astonishing 10,000 muskets. From Whitney's interchangeable barrels flowed mass production, defense contracting and the modern firearms industry.

Two hundred years and about 20 miles of I-95 separate Whitney's old manufacturing grounds from the house at 207 Earl Avenue in Bridgeport where third-grader Leroy (B.J.) Brown Jr. and his mother Karen Clarke were shot to death in January — killed, according to police, by the man whom B.J. had witnessed gunning down his mother's fiance months earlier. He was not the first 8-year-old to fall to bullets in Bridgeport: In 1997 Tynisha Gathers was accidentally shot dead by her 10-year-old sister. In part because of shootings of children, on Jan. 27, Bridgeport Mayor Joseph Ganim announced a \$100 million product liability lawsuit against the gun industry. The proposed damages reflect not just the incalculable cost of human life but the all-too-calculable public cost of aiding shooting victims: \$14,000 to treat a teenager who is shot, plus police, EMTs and other emergency services.

A NEW TACTIC

I'm all for finding any way of saving lives. But I must admit to skepticism about holding gun companies accountable for technology that doesn't yet exist.

Ganim is not alone. In a Brooklyn federal court, a jury recently found 15 of the country's largest handgun manufacturers liable for negligent marketing and distribution: the first verdict of its kind. Miami, New Orleans, Atlanta and Chicago recently announced similar lawsuits, and other cities are warming up cases. Gun executives echo the dire predictions made by tobacco companies a couple of years ago: "The survival of a domestic gun manufacturing industry is at stake," says a trade association official.

INTERACTIVES Taking the big guns to court:

Lawsuits against firearms industry

These anti-corporate suits represent a politically potent departure from past gun control efforts that, in attempting to restrain individual owners, inadvertently prepared the ground for NRA Second Amendment populism. These new lawsuits aren't "gun control" in the traditional sense.

New Orleans and Miami, both aided by the Center to Prevent Handgun Violence, claim manufacturers have failed "to develop and implement" safety locks preventing unauthorized use. Although I'm all for finding any way of saving lives, I must admit to some skepticism about holding gun companies accountable for technology that doesn't yet exist. In November, the Handgun Center lost a dangerous-design case in Oakland against Beretta. And the argument is too easily mooted by gunmakers: On Jan. 29, for instance, Colt announced a ten-year plan for developing a radio-controlled "smart gun" mechanism to prevent weapons from being fired by anyone but their owners. (Colt, with \$87 million in sales last year, wants the federal government to pay for its smart gun R&D.)

In Chicago, which bans possession or sale of handguns within city limits, gun companies saturate suburban shops with many more guns than would be sold in the average commuter town.

FEEDING A VIOLENT MARKET

In the Brooklyn federal court verdict, as in Chicago's suit, the argument takes a different turn: These lawsuits charge that the gun industry evades local gun regulations and feeds the violent-crime market by deliberately oversupplying weapons to areas with weak gun laws. In Chicago, which bans possession or sale of handguns within city limits, gun companies saturate suburban shops with many more guns than would be sold in the average commuter town. In a series of undercover stings, Chicago police found that suburban dealers actively pursue sales to city residents.

Hamilton v. Accu-tek, decided after a month-long trial, is the mother of all gun marketing cases. In 1993, 17-year-old Njuzi Ray Jr. was killed by a stray bullet from an Accu-Tek semiautomatic. Freddie Hamilton (Ray's mother), seven other survivor-families and their lawyer, Elisa Barnes, argued that the industry floods Southern states (no permits required, no fingerprint checks, no ownership records), knowing that "straw buyers" will steer the weapons north. Barnes has already succeeded in prying crucial data from a notoriously secretive industry.

It's now known that 90 percent of handguns used in New York crimes are legally purchased out of state — half of them in Florida, Virginia, North Carolina, South Carolina and Georgia. Barnes has shown that gun companies fail to meet minimal standards for inventory

Gun companies fail to meet minimal standards for inventory control or tracking considered routine for other hazardous products, from explosives to scuba gear.

The oversupply of guns is a public health issue, a civil rights issue, a corporate crime issue.

control or tracking considered routine for other hazardous products, from explosives to scuba gear.

GLOBAL WEAPONS ECONOMY

The Hamilton trial implicitly links today's gun market to the emerging global weapons economy. When traditional markets — the military and adult males — maxed out around 1990, gunmakers purveyed new models and advertising designed to appeal to women and younger shooters. And just as in the 19th century, when Connecticut's Smith and Wesson provoked a European arms race by persuading Russia to purchase 20,000 revolvers, today gunmakers' predatory marketing spree — \$6 billion in worldwide small-arms trade — poses global danger.

According to a recent United Nations report, "the excessive and destabilizing accumulation and transfer of small arms and light weapons" is the engine of crime and the increasing incidence of civil war in many countries. Sierra Leone and Liberia are just Bridgeport and Brooklyn writ large: As in U.S. cities, straw buyers purchase weapons on the open market and then drop them into the hands of local warring factions. In the face of rising calls to restrict this transnational small-arms dumping (with dark-skinned people often the victims, whether in Bridgeport or Freetown), the National Rifle Association has sudden concern for indigenous culture: "Non-hunting societies should not seek to impose their values on hunting societies," says its representative to a UN gun panel.

CHAIN OF CORPORATE RESPONSIBILITY

The Brooklyn negligence verdict is sure to be appealed. But whatever the fate of that appeal, and whatever the juries in other cities decide, there's a clear and global chain of corporate responsibility for the deaths of B.J. Brown, Karen Clarke, Tynisha Gathers and Njuzi Ray. This isn't a Second Amendment issue: the oversupply of guns is a public health issue, a civil rights issue, a corporate crime issue. As Bridgeport State Sen. Alvin Penn puts it, "There is a subculture of drugs, money and gangs, and guns are what drives them." Guns are "the basic tool that keeps this subculture together. Enough is enough."

Bruce Shapiro writes the column "Law and Order" for The Nation, where he is also senior editorial writer. A longtime investigative journalist and political commentator, Shapiro turned his attention to crime and

justice issues after surviving a near-fatal stabbing. His reflection on that incident, "One Violent Crime: A Testimony" will be published by Basic Books.

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Opinions



Suzanne Plunkett / AP file

Freddie Hamilton, center, is surrounded by friends and other plaintiffs in a Brooklyn lawsuit that resulted in a judgment that found a gunmaker responsible for putting guns in the hands of criminals.

Don't take gun makers to court

Lawyers, guns and money set a poor legal precedent

By James Jay Baker
 SPECIAL TO MSNBC

Feb. 18 — For two decades, gun control advocates and cash-hungry tort lawyers have been suing firearm manufacturers for injuries resulting from the third-party misuse of properly functioning firearms. These suits have been rightfully rejected by court after court throughout America. But now long-standing precedent has been broken, at least temporarily, in *Hamilton v. Accu-Tek*, the Brooklyn case in which a jury decided several gun companies should pay damages to plaintiffs for the crimes committed by armed hoodlums.

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STORY Opposing view: Bruce Shapiro on using the courts for gun control

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A FINAL OUTCOME has yet to be rendered, however, as the judge has been asked to throw out the jury's verdict. Failing that, there will be an appeal.

The Hamilton v. Accu-Tek jury was clearly confused. One juror confessed to Wall Street Journal reporters that, "Really the plaintiffs lost because they had the burden of proof, and in the end, there wasn't enough there. I didn't grasp that we had found so many negligent until I read it in the papers the next day."

AN ABERRATION

Thankfully, Hamilton v. Accu-Tek is an isolated aberration. Courts have taken a harsh view of lawsuits attempting to achieve "gun control" through judicial means. They have uniformly held that defendants cannot be held liable for injuries that occur because a properly operating product is criminally or negligently misused. Courts have noted that firearms are not defective if they perform as intended and that the general purpose of firearms is well understood by reasonable people.

INTERACTIVES Taking the big guns to court:

Lawsuits against firearms industry

Reasonable people see the clear intent of these lawsuits is to eliminate the firearms industry in America, using the courts to accomplish what anti-gun lobbyists have been unable to achieve in federal and state legislatures. This clear abuse of the tort liability system seeks to use potentially bankrupting lawsuits to force makers of legal but "politically incorrect" products to quit.

SMARTER GUNS

This clear abuse of the tort liability system seeks to use potentially bankrupting lawsuits to force makers of legal but "politically incorrect" products to quit.

The New Orleans lawsuit seeks to penalize manufacturers for not making guns "smarter," so that they can only be fired by their owners. New Orleans' mayor is unconcerned that the technology he demands has yet to come off the drawing board. The directors of National Institute of Justice's "Smart Gun Technology Project" have concluded that: "It may take a generation of smart gun systems to come and go before a smart gun is not only common but is favored over a non-smart gun."

The notion that safety with firearms can be achieved by guns themselves rather than by the conduct of gun owners is fundamentally at odds with long-standing safety rules. Training gun owners in gun-handling procedures has resulted in a steady and pronounced decline in fatal firearm accidents over several decades. According to the latest figures from the National Center for Health Statistics, fatal gun accidents among children are at the lowest point in history and have decreased 75 percent since 1975.

It must also be recognized that Colt's Manufacturing Company, which is developing a "smart" gun prototype with some government funding, estimates that incorporating this new technology will add \$300 to \$400 to the price of a gun. This raises the inevitable question about the morality of disarming honest folks by making unaffordable the most effective means of self-defense.

It is no secret that many of the same lawyers who plundered the tobacco industry see the gun industry as their next, but certainly not last, victim. In their greed they are joined by politicians such as the mayors of Chicago and New Orleans who are so blinded by dollar signs that they can see no differences in these industries and the products they manufacture. Fortunately, reasonable people understand that, unlike the tobacco companies, gun manufacturers have unshakeable arguments for the substantial benefits their products offer consumers.

HONEST FOLKS USE GUNS

This raises the inevitable question about the morality of disarming honest folks by making unaffordable the most effective means of self-defense.

Benefit number one, the benefit against which all costs of firearm misuse must be measured, is this: The best survey research shows that each year in the U.S. honest citizens use guns three to five times more often for protection than criminals use guns in crimes. Let me repeat that: each year in America, guns are used three to five times more often in protection than in criminal offenses.

That same research shows that guns are used defensively approximately 2.5 million times a year, and in 98 percent of those cases, merely brandishing the firearm stops the attack. The lawsuits in question totally ignore the benefits including their recreational uses of the products made by the manufacturers they seek to destroy.

Ambrose Bierce once defined a lawsuit as "a machine which you go into as a pig and come out as a sausage." Opportunistic politicians and lawyers are clearly preparing for a hearty meal, at the expense of all Americans' civil rights.

James Jay Baker is executive director of the National Rifle Association's Institute for Legislative Action.

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Date: Sun, 24 Jan 1999 08:40:15 -0900

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Handguns and Hired Guns

THE WASHINGTON POST

Sunday, January 24, 1999; Page B07

George F. Will

Mayor Marc Morial says money is not the city's main objective as it collaborates with some trial lawyers in suing handgun manufacturers and other parties. Money had better not be the objective.

Ten manufacturers produce 90 percent of the handguns made domestically. The entire industry's annual gross from handgun sales, \$2 billion to \$3 billion, cannot provide much of a windfall -- after the lawyers take their cuts -- for the 50 or more cities that may soon be suing.

The cities say they are trying to recoup the costs of misuses of the manufacturers' products by individuals. However, although different litigating governments are relying on different theories, all the arguments assume something problematic -- that private ownership of handguns is a determinable net cost to governments.

New Orleans' product liability suit against 15 manufacturers, three trade associations and several local pawnshops seeks damages for sales of guns that were "unreasonably dangerous." They supposedly were because they did not incorporate "recognition technologies" -- e.g., firing mechanisms activated only by a particular set of fingerprints, or by a signal sent by a computer chip in a ring worn by the owner -- that would prevent their use by children or by anyone other than the owner.

Morial says the suit is an incentive for manufacturers to produce a better product. He candidly says the reason the city is collaborating with trial lawyers working on a contingency-fee basis is that the city cannot afford to finance what may be protracted litigation. He is equally candid -- probably to the discomfiture of the lawyers -- in saying it is difficult precisely to ascertain the supposed costs of gun use.

Morial's exasperation about the costs of gunshots -- from emergency vehicles to emergency rooms to rehabilitative medicine -- is understandable. So is Chicago's frustration about mayhem by individuals who buy handguns in suburbs that have less-restricted gun sales. Chicago's public nuisance suit against 22 manufacturers alleges that the suburbs are flooded with guns manufacturers intend to reach the city market. Supposedly the guns must be intended for that market because they are small and inexpensive.

Chicago is seeking \$433 million compensation for police and hospital costs ascribed to gun violence since 1994. But a University of Chicago law professor, John B. Lott, argues that Americans supplement police services and save municipalities large sums by using guns defensively against criminals 2 million times a year, 98 percent of the time just by brandishing guns.

What about the welfare of children, which is today's reason of first resort for advocates of government action? Considering that bicycles, space heaters, swimming pools and cigarette lighters each kill more children under 15 than are killed annually by gun accidents (200 in 1976), most of the approximately 80 million Americans who own 200 million to 240 million guns must be quite careful.

Some supporters of the gun suits hope to bankrupt, by litigation costs, gun manufacturers -- makers of a legal product which only 16 percent of Americans favor banning. Thus the suits are weapons of those of anti-democrats who pursue social change by judicial fiat (litigation) rather than persuasion (legislation). The suits are extensions of the brazen cynicism of the tobacco suits, which have successfully asserted, falsely, that cigarette smoking costs government money. (Not only are cigarettes the world's most heavily taxed consumer good, governments also profit from smoking by the early deaths of smokers who do not collect medical and pension entitlements.)

The gun suits also mimic the tobacco suits in displacing responsibility. The tobacco companies are being held liable for consumers' foolish choices in using a legal product widely known to be harmful even when used properly. The gun manufacturers may be held liable for individuals' misuses of products that are supposed to be capable of inflicting harm, even death.

The suits are the most recent wrinkle in the pernicious practice of delegating the pursuit of public purposes to entrepreneurial trial lawyers, and the use of litigation to revise social policy and seize new sources of revenues for governments. However, there will be other wrinkles. Imagine:

New Orleans profits from casino gambling, as do other cities and states. Forty-seven states profit from lotteries or other forms of gambling. Perhaps soon some trial lawyers will gather some "addictive gamblers" and sue cities and states for the financial and other pain and suffering for which the cities and states are (the suits will charge) responsible because they make gambling available and aggressively advertise to encourage gambling. Such suits will be condign punishment for governments that have improvidently subcontracted policymaking to trial lawyers.



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N.Y. jury finds some gun makers liable in shootings

February 11, 1999
Web posted at: 7:23 p.m. EST (0023 GMT)

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NEW YORK (CNN) -- In a case bound to rock America's gun industry, a federal jury Thursday found 15 of the nation's largest handgun makers negligent in their marketing and distributing practices.

Another 10 manufacturers were cleared of negligence.

The mixed verdict required 42 pages of explanation. Jurors found nine companies partly responsible for the shooting death of one man. Four of the companies were found partly responsible for the shooting death of another, and three of the companies were found partly responsible for the wounding of a third man.

Families of six homicide victims and one man severely wounded in a shooting brought the civil lawsuit, seeking millions of dollars in what's being viewed as a test case for similar anti-gun suits brought by several large cities.

In the one case where the shooting victim survived his wounds, the jury assessed the gun manufacturers \$4 million in damages. But the victim, Steven Fox, and his mother will only get a portion of that, a sum in excess of \$500,000.

No damages were awarded to families of the dead, an issue that one



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

Arguing the case

The plaintiffs argued handgun makers "oversupply" gun-friendly markets, mainly in the South, aware that the excess guns flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

Lawyers for the plaintiffs accused the defendants of dumping handguns onto the black market like "toxic waste," making no effort to identify and discipline dishonest distributors.

Gun industry attorney James Dorr told the jury it was unfair to "hold the manufacturers of a lawful, legitimately sold product responsible for acts of outlaws who are totally outside their control.... The case is simply wrong."

The gun makers also asserted that in most of the shootings the plaintiffs never presented evidence conclusively linking the weapons used to harm their relatives to specific defendants.

The plaintiffs countered that the "chain of title" is irrelevant, instead accusing the entire industry of creating a widespread risk with negligent marketing -- a concept known as collective liability.

However, the jury decided that 10 of the 25 companies in this case had no liability whatsoever.

Trouble in the jury room

The mixed verdict followed six difficult days of deliberations, during which the jury told the judge several times that it was deadlocked.

Early Thursday, the jury sent a note to U.S. District Judge Jack Weinstein implying 10 of the 11 jurors were prepared to decide against the gun manufacturers. The note also stated that that 11th juror was holding out because of concern that such a verdict would "open the floodgates of lawsuits across the country."

Legal experts have compared the New York case to coordinated legal assault by numerous states on the tobacco industry and said that it could set a precedent for cities trying to recoup the costs of battling gun

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Should gun manufacturers be held liable for gun violence?

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violence.

Bridgeport, Connecticut, Chicago, New Orleans and Miami-Dade County, Florida, are suing the industry. Pro-gun groups have responded by lobbying state legislatures to pass laws prohibiting such suits. Georgia has passed a law to do that, and Louisiana is considering a similar measure.

The Associated Press contributed to this report.

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Gun industry finds itself at wrong end of the barrel

Brooklyn verdict could "open floodgates"

February 12, 1999

Web posted at: 9:56 a.m. EST (1456 GMT)

(CNN) -- Controversy has swirled around gun control in the United States for decades, but manufacturers have managed to fend off critics -- and plaintiffs - by claiming that they are not at fault when handguns are used to commit crimes.



Recent developments, however, pose a challenge not only to the way the gun industry does its business, but perhaps to its livelihood as well.

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In a case bound to rock America's gun industry, a federal jury in Brooklyn, New York, found 15 of the nation's largest handgun makers negligent in their marketing and distributing practices.

In the past, gun companies have defeated lawsuits charging that they made defective guns or objects that were inherently dangerous, but the Brooklyn suit was the first to take a broader perspective and charge them with negligent marketing.

The cities of New Orleans, Chicago, Atlanta, Bridgeport and Miami-Dade have also sued gun manufacturers and industry groups, and a number of other cities -- Los Angeles, Boston, Philadelphia, St. Louis and San Francisco among them -- are expected to follow

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

The Brooklyn case

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

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

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

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

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

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

The plaintiffs in the Brooklyn case argued handgun makers

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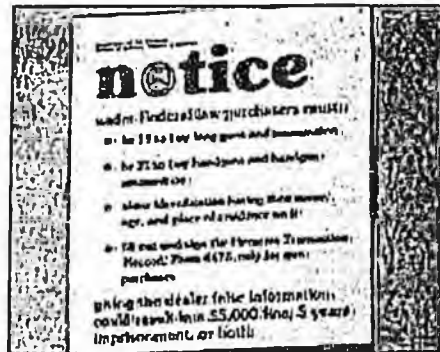
Should gun manufacturers be held liable for gun violence?

- Yes
 No
 Sometimes

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"oversupply" gun-friendly markets, mainly in the South, aware that the excess guns flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

Gun industry attorney James Dorr said it was unfair to "hold the manufacturers of a lawful, legitimately sold product responsible for acts of outlaws who are totally outside their control.... The case is simply wrong."



Two lawsuits allege that gun manufacturers are evading strict gun laws by oversupplying some markets.

industry.

Violent crimes involving handguns cost millions of dollars in police, ambulance and hospital expenses. Chicago is asking for \$433 million in its suit for costs incurred only since 1994.

The tactic worked against the tobacco industry, which has far deeper pockets than the gun industry. The prospect of another big payday, Tom Cochran of the Conference of Mayors told the New York Times, has lawyers "seeing green."

"This area of law is where tobacco was 10 years ago: it's ripe," says Temple Law School professor David Kairys, who is helping Philadelphia plot its strategy. "Their marketing is their weakness. There are some promotions out there that bring Joe Camel to mind."

A study by a New York corporate consulting firm found that gun manufacturers oversupply states like Florida where laws are weak, knowing the overflow will wind up in the black market.

It also found that manufacturers "substantially and disproportionately" increased production of guns like the 9 mm semi-automatic pistols favored by criminals.

The industry vs. cities

Since efforts to toughen laws at the state and national level have been frustrated by powerful industry lobbyists, the new approach is to achieve in court what has failed in boardrooms.

Unlike individuals, cities have the resources to hire high-powered lawyers and go toe-to-toe with the



In the latest wave of lawsuits, the focus is on gun manufacturers rather than gun stores.

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

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

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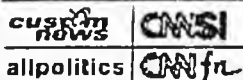


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Gun makers seek reversal of negligence verdict

NEW YORK (CNN) -- Despite a federal jury's ruling that some U.S. gun makers are liable for letting weapons fall into criminal hands, the euphoria of gun control advocates may be brief.

Immediately after the verdict was announced on Thursday, defense lawyers asked U.S. District Court Judge Jack Weinstein to set aside the verdict or declare a mistrial.

Plaintiffs' lawyers, meantime, asked him to direct the jury to award damages in all instances in which they found liability. The judge said he would rule after the parties submit written arguments.

After six days of deliberations in Brooklyn federal court, the jury found that 15 of the 25 gun makers named in a lawsuit were guilty of negligent marketing and distribution practices that allowed crimes to be committed with the guns they produce.

Eight of the defendants were also found liable in the deaths of six victims and the injury of a seventh.

The jury of two men and nine women awarded more than \$500,000 in damages to the one surviving plaintiff. No damages were awarded to the other six



Gun companies say their responsibility ends once guns are sold to licensed distributors

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During the monthlong trial, plaintiffs argued that the companies flooded gun-friendly markets, mainly in the South, knowing that excess guns would flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

They accused the defendants of making no effort to identify and discipline dishonest distributors.

The gun companies argued that their responsibility ends once they sell to licensed distributors. They said the job of policing gun runners should be left to the Bureau of Alcohol, Tobacco and Firearms, which has never required manufacturers to track their products to the street.

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- Yes
- No
- Sometimes

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Correspondent Jim Hill and the Associated Press contributed to this report.

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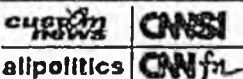
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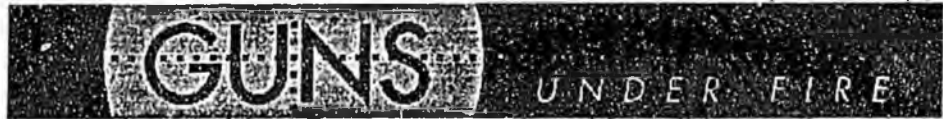
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Arms maker under siege looks to expand

February 11, 1999
Web posted at 5:31 PM EST (2231 GMT)

NEWPORT, New Hampshire (Reuters) - Sturm, Ruger & Co, the only publicly traded U.S. small arms maker, thinks it can weather the firestorm of lawsuits that cities and private citizens are aiming at the industry and still expand its market share.

The Southport, Connecticut-based company, marking its 50th anniversary this year, makes rifles, shotguns, pistols and revolvers. It also manufactures golf clubs for Ping and Big Bertha clubs for Callaway.

The firearms industry is coming under legal attack from a growing number of cities including Chicago, New Orleans, Miami and even neighboring Bridgeport, Connecticut, for allegedly failing to provide adequate safety features on guns.

Sturm Ruger is also among the defendants in a New York City case in which crime victims seek to hold handgun makers responsible for gun violence.

"It's the gun's fault for existing and it's the gunmaker's fault for making the gun," sneered William Ruger Jr., chief operating officer and the son and namesake of Sturm Ruger's chief executive. "It really has more to do with the people, than the guns. It's easier to blame the manufacturer than have people take responsibility for their actions," he said.

"These are criminals after all and it seems to me that they should be prosecuted under the laws that already exist. We comply with every regulation, every law in every state."

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every regulation, every law in every state."

CITIES FOLLOW PATH BLAZED IN TOBACCO SUITS

Cities, following the path state attorneys general blazed in pursuing the tobacco industry, allege that the defendants -- 30 weapons makers and 15 distributors -- take advantage of weak gun-control laws, especially in Southern states.

Chicago and the New York claimants argue that the industry produces more guns than the legitimate market needs and the extra weapons end up in the hands of criminals in Northeastern states with stricter gun-control laws, their lawyers say.

Other cities such as New Orleans, Miami and Bridgeport argue that the weapons themselves are unsafe. But the Rugers bristle at the suggestion that any of their 50 models of firearms are of poor quality or in any way defective.

The smell of melting wax, used to make molds for the rifle and handgun parts assembled at the New Hampshire factory, permeates Ruger's utilitarian office, as does a Yankee sense of frugality. There is no waste to be seen in this factory that makes weapons selling for upward of \$1,500.

The only sign of excess, perhaps, is the filigree and carving on some of the special rifles. Sturm, Ruger's are American guns made from American Black Walnut or U.S.-made laminates, grips from a business in nearby Hopkinton, New Hampshire, and steel poured from its own foundry.

The philosophy that has governed their production is Ruger Senior's intention to build products "to a standard so I would want it even if it was made by our competitors."

The gunmaker provides lockable revolver and pistol cases as standard equipment with its handguns. It offers customers who have older models of its six-shooters a free conversion kit to prevent accidental discharges. It runs advertising saying the "right to bear arms" it claims the Constitution guarantees also carries the responsibility to use those weapons responsibly.

'ARMS FOR RESPONSIBLE CITIZENS'

And Ruger Junior said it has all been done without any governmental prodding or regulations. The company's motto is "Arms Maker for Responsible Citizens."

Unlike the tobacco industry, the gun industry does not have deep pockets. Handgun sales, which soared in 1993, 1994 and 1995, have been flat or declining since.

Sturm, Ruger, which will report its earnings this month, expects to show about \$150 million in revenues from weapons for 1998. Total revenues are expected to exceed \$200 million.

POLL:
Should gun manufacturers be held liable for gun violence?
 Yes
 No
 Sometimes
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Industry analysts estimated that the No. 1 U.S. handgun maker, Smith & Wesson Corp., based in Springfield, Massachusetts, and a unit of British conglomerate Tomkins Plc., would have about \$140 million in revenues.

"The gun industry is a mature industry. It was mature about 100 years ago," Morgan Keegan & Co. analyst David Guthrie said. "Basically Ruger is a metals casting company. It is conservatively run. There's no debt on its balance sheet. It's a solid company."

He said he had had it as a "hold" stock for several years.

Ruger Junior expects to report record long-gun sales in 1998 and near-record sales of the same items in 1999 and says he wants to "expand our market share" in the new millennium.

The solid balance sheet means the acquisition of a smaller competitor is "a possibility. But it would have to be a friendly deal. I don't know that any of them have an interest in being acquired," he said.

He also speaks of the titanium casting equipment that Sturm, Ruger has nurtured. It is titanium, with its natural resistance to salt-water corrosion, lightness and strength, that makes the Big Bertha golf club so popular.

"You can have a larger striking face and still have the right weight," he explained.

The company has also begun to make titanium implants for medical devices, but because of liability insurance questions it has restricted itself to those intended to be permanently installed, Ruger said.

And it is also making hammers from the metal. "What we're trying to do -- and what I think the golf industry is trying to do -- is bring titanium into the home. ... We're generally optimistic about it."

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NRA Wins Key Liability Fight

Bill Could Bar Atlanta from Pursuing Gun Industry Lawsuit

By *Lori Johnston*
The Associated Press

ATLANTA, Feb. 9 — Following heavy lobbying by the National Rifle Association and others, the Georgia Senate has approved a bill that could bar Atlanta from pursuing its liability lawsuit against the gun industry.

By a 44-11 vote, lawmakers on Monday approved legislation that would prohibit local governments from suing gun makers. The bill is expected to be passed by the House, which approved a similar measure last year, and signed into law by Gov. Roy Barnes.

The vote followed an intense lobbying effort by the NRA and the Senate's Democratic leadership. The gun industry is lobbying other states to pass similar legislation.

Opponents of the Georgia bill called the legislation anti-Atlanta and unconstitutional.

"We do not believe it is legal for the Georgia General Assembly to prohibit cities from filing lawsuits designed to protect the public's interests," Atlanta Mayor Bill Campbell said. "We still believe the Senate and the House have sent the wrong message to the public."

City Filed Suit Last Week

Atlanta filed its lawsuit against 17 gun manufacturers last week as the city hosted the nation's largest gun show. It joined four other municipalities — Chicago, New Orleans, Bridgeport, Conn., and the unified Miami-Dade County government in Florida — in seeking reimbursement for the costs of gun-related violence.

The Chicago suit claims gun makers and dealers purposely flood the suburbs with guns, making it easier for criminals in Chicago, which has tougher

SUMMARY

Georgia's state senate passed a bill that could stop Atlanta from pursuing a liability suit against the gun industry.



anti-gun laws, to bring one into the city. Other suits seek compensation for costs incurred from gun violence.

State Sen. Mike Egan of Atlanta, the only Republican who voted against the measure, said the bill unfairly singles out Atlanta for special action.

"The NRA comes along and says, 'Tell the city it's gone too far,' and we seem to be jumping to their signal," he said.

James Baker, chief lobbyist for the NRA, said some Republicans were contacted to support the measure. "We were trying to convince them that we needed to get this thing passed, particularly because the mayor of Atlanta decided last week to go ahead and file suit," he said.

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Louisiana Governor also favors bill to ban gun suits

February 11, 1999
Web posted at: 8:08 AM EST (1308 GMT)

NEW ORLEANS (AP) -- Less than a day after Georgia became the first state to shield gun makers from product liability lawsuits by cities and counties, Louisiana's governor said he supports such a ban.

Gov. Mike Foster on Wednesday threw his backing behind a bill that would block a New Orleans lawsuit seeking damages from gun manufacturers for the costs of gun violence. The bill Georgia Gov. Roy Barnes signed Tuesday was meant to block a similar case by Atlanta.

"Georgia had no problem with it," Foster said while speaking to a civic club in Baton Rouge. "And we, in Louisiana, believe in 2nd Amendment rights."

New Orleans Mayor Marc Morial criticized Foster's decision, saying the bill "is a sad sellout to the money and power of the gun lobby."

The bill's sponsor is Rep. Steve Scalise, who plans to run for the seat of outgoing U.S. Rep. Bob Livingston. He said the goal is to protect gun store owners from the cost of defending lawsuits.

"It's the criminals, not the small businesses, that must accept responsibility when they pull the trigger," Scalise said.

Foster's announcement came a day after Morial suspended a controversial gun swap deal between New Orleans and Glock Inc.

Instead of paying \$630,300 for 1,700 new pistols, New Orleans agreed to give the Smyrna, Georgia-based company old police pistols and thousands of confiscated guns.

Morial suspended the contract, citing reports that some of the weapons may have resurfaced in Louisiana, which would violate the contract.

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Subject: eBay Bans Firearm Sales On Its Web Site

Date: Fri, 19 Feb 1999 11:06:21 -0900

From: "Dave Williams" <dlwillms@mosquitonet.com>

To: "David L. Williams" <dlwillms@mosquitonet.com>

Auctioneer eBay Bans Firearm Sales On Its Web Site
2.38 p.m. ET (1938 GMT) February 19, 1999

NEW YORK - eBay Inc., the Internet site that pioneered online auctions, said Friday it will no longer allow its members to buy and sell guns and ammunition through its service.

The top one-to-one auction site on the Web, where individuals sell items to each other, took the action as the gun industry has become the target of lawsuits by several cities in civil actions similar to those taken against the tobacco industry in recent years.

eBay - which allows individuals to sell online everything from "The Best of Sex and Violence" on video and hand-dipped marijuana incense - said the Internet was the wrong place for selling firearms.

"It was the right thing to do because firearms and ammunition do not have a place on the site," Steve Westly, vice president of marketing and business development, said.

"Initially, the category was created for antique and collector guns, but standard issue firearms are being posted and it became clear that it is hard to draw a line that fits with our brand image."

eBay, based in San Jose, Calif., said gun and ammunition sales account for less than 0.25 percent of its total revenue. The company had total sales of \$47.3 million last year.

Beginning March 5, firearms will not be listed in any of its 1,000-plus categories, including the "Firearms," "Antique," "Collectibles" and "Sport" categories. Since items can be listed for up to seven days, eBay will stop accepting listings on Feb. 26.

The ban on gun sales comes amid a turbulent time for gun manufacturers. They industry has been sued by major cities across the nation for allegedly failing to provide adequate safety features or for irresponsible marketing.

This month a federal jury in Brooklyn, N.Y., found 15 gun manufacturers guilty of negligence in their marketing and distribution practices. Gun manufacturers are pursuing appeals in the case.

eBay currently has more than 2 million users and lists more than 1.5 million items ranging from Beanie Babies to "X-Files" collectibles.

Firearms-related items - such as holsters, literature, clothing and scopes - may still be sold on eBay, but only listed in the "Collectibles: Western Americana," "Collectibles: Militaria" and "Miscellaneous: Sporting Goods: Hunting" categories, the company said.

eBay said it had no plans to eliminate or change other categories.

In Nasdaq trading Friday eBay shares were down 94 cents at \$236.06 on the Nasdaq market .

comments@foxnews.com

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By Andrea Orr

[Current quotes](#) (delayed 20 mins.)

PALO ALTO, Calif.

[EBAY](#) 239 1/2 + 3/8 (1.86%)

(Reuters) - [eBay Inc.](#), the popular Internet auction site, Friday said it will ban all sales of guns and ammunition sales on its Web site, having determined that "the Internet is not an appropriate venue for this type of merchandise."

The decision marks a change of policy for eBay, which has in the past said it would allow people to buy and sell firearms, provided the items were legal and were exchanged in a legal manner, with

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can pick it up.

Hite said she suspected most legitimate gun dealers would follow this procedure for fear of losing their licenses. But she said there was a concern that auction sites like eBay, would bring together individuals who didn't know the laws, or were tempted to skirt them.

"Someone who is looking to complete an illegal firearms transaction might look to the Internet," she said. "There are lots of ways to facilitate illegal gun sales and the Internet is one of them."

For its part, eBay said its thoughts on gun sales had evolved as its site grew and it became more aware of the controversy surrounding gun sales.

"While we acknowledge the gun collectors and sports enthusiasts among our users, eBay takes its role as a responsible member of the online community very seriously," Steve Westly, vice president of marketing at eBay, said in a statement.

The company declined to say whether any illegal transactions had ever been completed on its site, but said it had found several illegal items posted for sale, which it pulled as they were discovered.

EBay's ban on gun sales, which will take effect March 5, also comes amid a turbulent time for gun manufacturers. The industry has been sued by major cities across the nation for allegedly failing to provide adequate safety features or for irresponsible marketing. A Brooklyn, New York, jury recently found 15 gun manufacturers guilty of negligence in their marketing and distribution practices.

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Gun Verdict May Boost Companion Lawsuits

By Tom Hays
 Associated Press
 Saturday, February 13, 1999; Page A12

NEW YORK, Feb. 12 — A Brooklyn jury's unprecedented verdict finding gunmakers liable for shootings could give a boost to other cities around the nation that are suing the industry.

Other cities "are going to have it a whole lot easier now," said David Yassky, a Brooklyn Law School professor who closely followed the trial. "They have a very solid precedent that what the gun industry does is negligent."

Chicago, New Orleans, Bridgeport, Conn., and Miami-Dade County are suing the industry to recoup the costs of fighting gun violence. Los Angeles, Philadelphia and Baltimore are among those considering the move.

Mayor Richard M. Daley of Chicago said the Brooklyn verdict demonstrated that "people are demanding that the gun industry be held accountable." And Miami-Dade County Mayor Alex Penelas hailed it as "a major, major, major victory that will have major ramifications."

But others argued that Thursday's verdict proved an awkward outcome to an awkward case, making its impact uncertain.

Dave Kopel of the Independence Institute, a conservative think tank in Golden, Colo., said the jury had been asked to fix a social problem by blaming gunmakers for illegal use of legal products -- despite little or no evidence that those manufacturers' brands were involved in any of the shootings at issue.

"This a compromise verdict that makes no sense at all," said Kopel, who is also an adjunct law professor at New York University Law School. "The jury didn't know the first thing about what was going on."

The verdict came after a month-long trial in federal court. Despite sending Judge Jack Weinstein numerous notes saying they were deadlocked, the 11 jurors finally found 15 of 25 defendants negligent in how they sell handguns.

But the jury also said only nine companies were liable in the shootings. Of those, only three companies -- American Arms, Beretta USA and Taurus International Manufacturing -- were ordered to pay a total of \$500,000 to one of the seven plaintiffs. The plaintiffs had been seeking \$500,000 to \$10 million each.

In a post-verdict meeting between jurors and attorneys, the jurors reportedly said they rejected the plaintiffs' central claim that gunmakers negligently oversupply states that have lax gun laws, knowing the excess feeds a black market in strict gun law states such as New York.

Instead, they focused on whether the defendants had provisions in their contracts with distributors that sought to keep guns out of criminals' hands, such as banning the sale of their products at gun shows. Those that did not were found negligent.

The ambiguous outcome did not prevent trial attorneys on both sides from claiming victory. And the defense team said it is confident the portion of the verdict that went against gunmakers will be overturned on appeal.

The case still has caused concern among manufacturers who fear it will embolden the suing cities. Richard Feldman, head of the Atlanta-based American Shooting Sports Council, said he received several calls from industry insiders Thursday night.

"I told them, 'Don't panic,' " Feldman said. "Juries make mistakes. That's what appeals courts are for. But I do worry about public perception."

Feldman predicted the verdict will intensify the efforts of pro-gun groups that are lobbying state legislatures to pass laws prohibiting liability suits like the one filed in Brooklyn.

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S B

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SENATE COMMITTEE REPORT

DATE: 3/24/99

FURTHER:

DATE TURNED IN TO OFFICE: 3/29/99

Judiciary Committee considered SENATE BILL NO. 87

"An Act requiring a license to sell rental car insurance."

and recommends:

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

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DCED	3/24	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



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REQUESTERS STATEMENT

SB 87, License to Sell Rental Car Insurance.

Senate Bill 87 provides for a limited license to a motor vehicle rental company authorizing the sale of insurance incidental to the rental transaction. Currently, the Alaska insurance code is not clear on whether incidental sale of personal insurance on a rental motor vehicle should be licensed by the state or not.

As a result of regulatory action and litigation in other states, industry representatives and regulators are reviewing state statutes to determine if they contain provisions for the sale of these products when incidental to the renting or leasing of a motor vehicle. This Act will remove any ambiguity on licensure regarding the offering and sale of these insurance products in connection with the vehicle rental. The Division of Insurance and the industry would both be positively impacted by enactment of this legislation.

SB 87 establishes the jurisdiction of the Division of Insurance over the rental car industry in regard to the sale of their insurance products. Clarification of Division oversight and authority allows the agency to better regulate the sale of these products and protect consumer interests. The industry will gain a clear understanding of the requirements and its responsibilities regarding the promotion and sale of their insurance products.

Many of these products have been offered for 10 to 20 years. While many of the coverages are optional, customers who are not covered by existing insurance because they don't own their own vehicles need access to this type of insurance to avoid potential liability. SB 87 will allow uninterrupted access to coverage.



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SB 87, RENTAL CAR INSURANCE

SECTIONAL

Section 1 exempts the new limited license for selling car rental insurance, that is established in following section 2, from the general examination and testing requirements of the Division of Insurance for applicants and licensees.

Section 2 adds a new subsection AS 21.27.150 (a)(7) that establishes the "rental motor vehicle limited producer license", the conditions for the license, and its limitations.

S B

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LEGAL SERVICES

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MEMORANDUM

March 25, 1999

SUBJECT: CSSB 96(JUD) - Criminal History Records and Child, Foster, and Vulnerable Adult Care Licensing (Work Order No. 21-LS0448\D)

TO: Senator Robin Taylor
Attn: Sue

FROM: Gerald P. Luckhaupt *JPL*
Legislative Counsel

Enclosed is the draft CS(JUD) you requested. The draft adds a new bill section that amends AS 12.62.900(23) by removing the inchoate forms (attempt, solicitation, and conspiracy to commit) of AS 11.61.110(a)(7)¹ from the definition of "serious offense."

My work on this bill and the CS(JUD) has exposed a very serious problem in AS 47.35. At least five sections within AS 47.35 relate to criminal history records, criminal history record checks, or disqualification from licensing due to certain criminal convictions or arrests.²

¹AS 11.61.110(a)(7) provides:

(a) A person commits the crime of disorderly conduct if,

...

(7) the offender intentionally exposes the offender's buttock or anus to another with reckless disregard for the offensive or insulting effect the act may have on that person.

²See AS 47.35.017(b)(5) and (6); 47.35.022(a) and (b); 47.35.023(b); 47.35.047(b); and 47.35.130(a). AS 47.35.017(b)(5) and (6) provide:

(b) An application submitted under this section must contain at least the following information:

...

(5) a release for the administrator or foster parent and for each other person who is 16 years of age or older, as specified by the department by regulation, who will have contact with individuals served by the facility or agency, authorizing the department to review all federal, state, and municipal criminal

(continued...)

²(...continued)

justice information, whether of this state, of a municipality of this state, or of another jurisdiction, medical records, licensing records, and protective services records, identified in regulations adopted under this chapter, that are relevant to the person who is the subject of the release and to the type of license for which the application has been submitted;

(6) two sets of fingerprints and the social security number of each person required to provide a release under (5) of this subsection in order for the department to submit the fingerprints to the Department of Public Safety for the purpose of conducting state and national criminal background checks from criminal justice information received under AS 12.62 and regulations adopted under AS 12.62; the department may not approve an application under this section until the results of the criminal background check have been submitted to the department;

AS 47.35.022(a) and (b) provide:

(a) Except as provided in (b) of this section, the department may not place or continue placement of a child for care for payment under AS 47.10 in a foster home that is licensed under this chapter if the department finds that a person for whom fingerprints are required to be submitted for licensure of the foster home is currently under arrest for, charged with, or has been convicted of, or found not guilty by reason of insanity of, a serious offense.

(b) Notwithstanding (a) of this section, the department may place or continue a placement for foster care if the applicant or licensee demonstrates to the satisfaction of the department that the applicant, licensee, or other person committed the conduct described in (a) of this section at least five years before the placement, and the conduct

(1) did not involve a victim who was under 18 years of age at the time the conduct occurred;

(2) was not a crime of domestic violence as defined in AS 18.66.990; and

(3) was not a violent crime under AS 11.41.100 - 11.41.455 or a law or an ordinance of another jurisdiction having similar elements.

AS 47.35.023(b) provides:

(b) Notwithstanding (a) of this section, if an emergency exists and a child must be immediately placed, the department or the department's designee may issue a provisional foster home license on an emergency basis for a period of 90 days or less if the department or the department's designee determines that the applicant meets minimal requirements for emergency conditions and the applicant agrees in writing to provide the fingerprint information described in AS 47.35.017(b) within 30 days of the placement of a child in the foster home. The department may extend a provisional foster home license issued under this subsection for one or two additional periods

(continued...)

^{2/}(...continued)

of up to 90 days each in order to obtain the information from the national criminal background check required under AS 47.35.017(b)(6). The department may not issue a license under this subsection before checking state and national criminal justice information available to the department under AS 12.62 and regulations adopted under AS 12.62 about the administrator or foster parent and each person who is 16 years of age or older in the foster home who will have contact with the child. If the department cannot obtain direct access to the state and federal criminal justice information, the department shall request the agency having primary law enforcement responsibility for the geographic area in which the prospective foster home is located to obtain the information and provide it to the department before the license is issued under this section. If the criminal justice information readily available to the department shows an offense which a person would be required to notify the department under AS 47.35.047(b), the department may not issue the license under this subsection. If the additional criminal justice information available from the fingerprint search or another source after the license is issued reveals that the person has a record for one or more of these offenses, the department shall immediately revoke the license and move the child to an appropriate placement. For purposes of obtaining criminal justice information under this subsection, the department is a criminal justice agency conducting a criminal justice activity under AS 12.62.

AS 47.35.047(b) provides:

(b) A licensee shall notify the department within 24 hours after having knowledge of a conviction or indictment, presentment, or charging by information or complaint of an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person for a violation of the following laws or the laws of another jurisdiction with similar elements:

- (1) offenses against the family and vulnerable adults under AS 11.51;
- (2) perjury under AS 11.56.200;
- (3) offenses included in the definition of "serious offense" under AS 12.62.900.

AS 47.35.130(a)(2) and (3) provide:

(a) In addition to the ground of violation of this chapter or a regulation adopted under this chapter, the department may revoke, or decline to renew, a license issued under this chapter on one or more of the following grounds:

...

(2) the indictment or charging by information or complaint, or a criminal conviction within the last 10 years, of the licensee or administrator, foster parent, member of the licensee's household, regular

(continued...)

Despite the obvious interrelation of these statutes that deal with licensing of foster homes, child care facilities, residential child care facilities, semi-secure residential child-care facilities, secure residential psychiatric treatment centers, child placement agencies, and maternity homes, placements of children in or with these facilities, homes, or agencies, and the safeguarding of the children placed by checking the criminal histories of the workers and others in these facilities, homes, or agencies, these statutes are inconsistent with regard to the crimes that disqualify a person from being licensed to provide these services to children or that allow a child to be placed with a person with certain convictions. While AS 47.35.017(b)(6) requires fingerprint cards from applicants to provide these child care services "for the purpose of conducting state and national criminal background checks from criminal justice information received under AS 12.62 and regulations adopted under AS 12.62", neither it nor any other provision of AS 47.35 actually identifies the crimes that disqualify a person from receiving a license. AS 47.35.023(b) allows the issuance of a provisional license in emergencies but provides

[t]he department may not issue a license under this subsection before checking state and national criminal justice information available to the department under AS 12.62 and regulations adopted under AS 12.62 about the administrator or foster parent and each person who is 16 years of age or older in the foster home who will have contact with the child.

This section further provides that

[i]f the criminal justice information readily available to the department shows an offense which a person would be required to notify the department under AS 47.35.047(b), the department may not issue the license under this subsection. If the additional criminal justice information available from the fingerprint search or another source after the license is issued reveals that the person has a record for one or more of these offenses, the department shall

²(...continued)

volunteer, or staff person for

(A) a felony;

(B) a misdemeanor crime of assault, reckless endangerment, contributing to the delinquency of a minor, or misconduct involving a controlled substance; or

(C) the crime of perjury, as defined in AS 11 or the laws of another jurisdiction;

(3) the conviction, indictment, presentment, or charging of the licensee or an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person at any time for a sex crime as defined in AS 12.62.035;

....

immediately revoke the license and move the child to an appropriate placement.

Two conflicts between this statute and the other provisions of AS 47.35 are immediately apparent. First, while this statute prohibits the issuance of, and requires revocation of, a provisional license if a person has a record for a reportable offense under AS 47.35.047(b), AS 47.35.130 does not mandate the revocation of a license for these same offenses. Revocation is not required nor is it even available for some offenses that disqualify a person from initially receiving a license or that require revocation of a provisional license. Second, AS 47.35.023(b) requires the removal of the child if a provisional licensee is found to have a record for a reportable offense under AS 47.34.047(b). AS 47.35.022(a) which also deals with foster care placement requires the removal of the child for a more limited range of offenses than are reportable under AS 47.35.047(b) (which mandate removal under AS 47.35.023(b)) and AS 47.35.022(b) allows the department to waive the removal requirement of AS 47.35.022(a). This section, of course, conflicts with the removal requirement of AS 47.35.023(b) which does not provide for waivers.

All of these sections identify different offenses and different conduct as being significant. For example, under AS 47.35.047(b) all licensees are required to self-report a conviction or indictment, presentment, or charging by information or complaint of an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person for a violation of the following laws or the laws of another jurisdiction with similar elements:

- (1) offenses against the family and vulnerable adults under AS 11.51;
- (2) perjury under AS 11.56.200;
- (3) offenses included in the definition of "serious offense" under AS 12.62.900.

But, AS 47.35.130(a)(2) and (3) only allow revocation of (or a decision to decline to renew) of a license for

- (2) the indictment or charging by information or complaint, or a criminal conviction within the last 10 years, of the licensee or administrator, foster parent, member of the licensee's household, regular volunteer, or staff person for
 - (A) a felony;
 - (B) a misdemeanor crime of assault, reckless endangerment, contributing to the delinquency of a minor, or misconduct involving a controlled substance;or
 - (C) the crime of perjury, as defined in AS 11 or the laws of another jurisdiction;
- (3) the conviction, indictment, presentment, or charging of the licensee or an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person at any time for a sex crime as defined in AS 12.62.035. . .

Senator Robin Taylor

March 25, 1999

Page 6

And compare those sections with AS 47.35.022(a) and (b) which requires the removal of a child from a foster home when a person in the home has the criminal history identified in (a) but also allows the department to leave the child in the home if the person with the criminal history shows the criminal history is mitigated by the factors provided in (b):

(a) Except as provided in (b) of this section, the department may not place or continue placement of a child for care for payment under AS 47.10 in a foster home that is licensed under this chapter if the department finds that a person for whom fingerprints are required to be submitted for licensure of the foster home is currently under arrest for, charged with, or has been convicted of, or found not guilty by reason of insanity of, a serious offense.

(b) Notwithstanding (a) of this section, the department may place or continue a placement for foster care if the applicant or licensee demonstrates to the satisfaction of the department that the applicant, licensee, or other person committed the conduct described in (a) of this section at least five years before the placement, and the conduct

(1) did not involve a victim who was under 18 years of age at the time the conduct occurred;

(2) was not a crime of domestic violence as defined in AS 18.66.990; and

(3) was not a violent crime under AS 11.41.100 - 11.41.455 or a law or an ordinance of another jurisdiction having similar elements.

These are only some of the more serious conflicts in the chapter. It is my opinion that these conflicts may seriously impair the ability of the Department of Health and Social Services to license, and revoke the licenses of, child care providers and to protect children. I am not able at this time to provide you with a draft CS that would resolve these very serious problems, since any attempt to resolve the problems will necessarily require policy choices by the legislature.

GPL:glc
99-128.glc

Enclosure

I-LS0448\D
Luckhaupt
3/25/99

CS FOR SENATE BILL NO. 96(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal history records, to the definition of "serious offense"
2 in statutes, and to revocation of or failure to renew certain licenses based on
3 criminal conduct or alleged criminal conduct; and providing for an effective date."

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

5 * Section 1. AS 12.62.900(23) is amended to read:

6 (23) "serious offense" means a conviction for a violation of of
7 AS 11.61.110(a)(7) or of the laws of another jurisdiction with substantially similar
8 elements or for a violation or an attempt, solicitation, or conspiracy to commit a
9 violation of any of the following laws [,] or of the laws of another jurisdiction with
10 substantially similar elements:

- 11 (A) a felony offense;
- 12 (B) a crime involving domestic violence;
- 13 (C) AS 11.41.410 - 11.41.470;
- 14 (D) AS 11.51.130;

1 (E) [AS 11.61.110(a)(7) OR 11.61.125;

2 (F)] AS 11.66.100 - 11.66.130; [OR]

3 (F) [(G)] former AS 11.15.120, former 11.15.134, or assault
4 with the intent to commit rape under former AS 11.15.160; or

5 (G) [(H)] former AS 11.40.080, 11.40.110, 11.40.130, or
6 11.40.200 - 11.40.420, if committed before January 1, 1980;

7 * Sec. 2. AS 47.05.017(a) is amended to read:

8 (a) State money may not be used for a home care provider unless criminal
9 justice information [RECORDS] under AS 12.62.160 is [AS 12.62.035(a) ARE]
10 requested for the provider within 10 business days after the provider is hired to provide
11 the care and is [ARE] reviewed by the department within five business days after the
12 criminal justice information is [THEY ARE] received. The department shall require
13 the grantee or contractor to request [DO] the criminal justice information
14 [RECORDS REQUEST] and, the department shall review the information
15 [REQUIRED] under this subsection for a home care provider employed by a person
16 who has a grant or contract from the department to provide home care services.

17 * Sec. 3. AS 47.14.100(h) is amended to read:

18 (h) The department may not pay for respite care, as defined in (d) of this
19 section, unless the department or the entity that has contracted with the department to
20 provide the respite care requests criminal justice information [RECORDS] under
21 AS 12.62.160 [AS 12.62.035(a)] for the individual who provides the respite care within
22 10 business days after the individual is hired to provide respite care and, the
23 department reviews the criminal justice information [RECORDS] within five
24 business days after receiving the criminal justice information [THEM].

25 * Sec. 4. AS 47.35.130(a) is amended to read:

26 (a) In addition to the ground of violation of this chapter or a regulation
27 adopted under this chapter, the department may revoke, or decline to renew, a license
28 issued under this chapter on one or more of the following grounds:

29 (1) failure to submit a timely and complete renewal application;

30 (2) the indictment or charging by information or complaint, or a
31 criminal conviction within the last 10 years, of the licensee or administrator, foster

1 parent, member of the licensee's household, regular volunteer, or staff person for

2 (A) a felony;

3 (B) a misdemeanor crime of assault, reckless endangerment,
4 contributing to the delinquency of a minor, or misconduct involving a
5 controlled substance; or

6 (C) the crime of perjury, as defined in AS 11 or the laws of
7 another jurisdiction;

8 (3) the conviction, indictment, presentment, or charging of the licensee
9 or an administrator, foster parent, member of the licensee's household, regular
10 volunteer, or staff person at any time for a serious offense; "serious offense" in this
11 paragraph has the meaning given in AS 12.62.900 [SEX CRIME AS DEFINED IN
12 AS 12.62.035];

13 (4) obtaining or attempting to obtain or retain a license under this
14 chapter by fraudulent means, misrepresentation, or by submitting false information;

15 (5) failure to correct a violation noted in a report of investigation
16 provided under AS 47.35.105(c) or 47.35.110(b);

17 (6) failure to comply with a final administrative order issued by the
18 department under AS 47.35.120.

19 * Sec. 5. AS 47.65.050(b) is amended to read:

20 (b) The commission may not make payments to a sponsor whose program
21 includes family respite care services or home care services unless the sponsor has
22 agreed to request criminal justice information [RECORDS] under AS 12.62.160
23 [AS 12.62.035(a)] for the individual who will provide the services within 10 business
24 days after the individual is hired to provide the services and, the commission reviews
25 [REVIEW] the criminal justice information [RECORDS] within five business days
26 after receiving the criminal justice information [THEM].

27 * Sec. 6. AS 47.65.100(e) is amended to read:

28 (e) The commission may not award a grant under this section for family
29 respite care services or for adult day care services that include home care services
30 unless the grantee has agreed to request criminal justice information [RECORDS]
31 under AS 12.62.160 [AS 12.62.035(a)] for the individual who will provide the services

- 1 within 10 business days after the individual is hired to provide the services and, the
2 commission reviews [REVIEW] the criminal justice information [RECORDS] within
3 five business days after receiving the criminal justice information [THEM].
4 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date: _____
 Title: Relating to access to criminal history records....

 Sponsor: Senate Judiciary
 Requestor: (S) JUD

Department Affected: Administration
 BRU: Division of Senior Services
 Component: Senior Services Grants

 COMPONENT SERIAL NO. 2354

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	135.0	135.0	135.0	135.0	135.0	135.0
MISCELLANEOUS						
TOTAL OPERATING	135.0	135.0	135.0	135.0	135.0	135.0

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	135.0	135.0	135.0	135.0	135.0	135.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	135.0	135.0	135.0	135.0	135.0	135.0

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill requires that criminal justice information be collected and reviewed by the Alaska Commission on Aging for all individuals (salaried and volunteers) providing respite, home care and adult day services through non-profit agencies receiving grant funding from the Alaska Commission on Aging.

Costs to grantee agency/job applicants: \$135,036 (@\$99/job applicant) for fees to be paid to Dept. Public Safety to secure necessary criminal justice information for 1,364 job applicants/year. Cost breakout: \$20 - 2 sets fingerprints; \$20 initial state background check; \$59 detailed state and FBI/national check. (Most jobs in senior citizens' respite, adult day and chore services, as well as drivers, pay an average of \$8/hour, making this an expensive cost of application if born by the applicant. Depending on grantee agency policy, the agency may carry this cost or share it with the applicant.

Prepared by: Jane Demmert, Executive Director, AK Commission on Aging
 Division: Senior Services

Phone: 465-1879
 Date: _____

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

Date: 3/26/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date	_____	Dept. Affected	<u>Alaska Court System</u>
Title	<u>Access to Criminal History Records</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Senate Judiciary</u>	Component	<u>Trial Courts</u>
Requester	<u>Senate Judiciary</u>	Component Serial No.	<u>789</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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>264-8285</u>
Agency	<u>Alaska Court System</u>	Date/Time:	<u>3/12/99 1:44 PM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date	<u>3/12/99</u>
Agency	<u>Alaska Court System</u>		

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date/Time (Note if correction): _____
Title: Access to Criminal History Records.

Dept. Affected: Health and Social Services
BRU: Family & Youth Services Management
Component: Family & Youth Services Management
COMPONENT SERIAL NO. 2306
See also (SN#): _____

Sponsor: Senate (JUD)
Requestor: Senate (JUD)

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department if enacted.

5/12/99

Prepared by: Theresa Tanouy
Division: Family & Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date/Time: 3/12/99 8.02 AM
Date: 3/12/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date: _____
Title: "An Act relating to access to criminal history records..."
Sponsor: (S) Judiciary
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

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

Date: 3/12/99

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Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

SPONSOR STATEMENT

SB 96

Access to criminal history records for revocation of certain licenses based on criminal conduct or alleged criminal conduct

The Legislature passed legislation in 1994 allowing access to criminal records of persons engaged as care givers of children and the elderly to protect them from predation from known offenders. That legislation made reference to certain statutes that were repealed in a subsequent bill the same year.

This problem was brought to the attention of the Legislature by the Department of Law. This legislation originally started out as a revisor's bill but the Senate Judiciary Committee determined that it contained substantive changes in the law and would better be dealt with in a regular bill.

SB 96 makes the changes necessary to conform with federal government requirements for access to federal crime records and provides continuity in our statutes. Requests for criminal information will be made under AS 12.62.160 and the regulatory agency will review the information. Additionally, the list of offenses has been expanded to refer to "serious offenses" as defined in AS 12.62.900.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

LEGAL SERVICES

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

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


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

MEMORANDUM

February 26, 1999

SUBJECT: Criminal History Record Information (Work Order No. 21-LS0488VA)

TO: Senator Robin Taylor
Attn: Mel Krogseng

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed please find the bill you requested to replace SB 41, the bill with corrective amendments to the Alaska Statutes, requested by the Revisor of Statutes. After talking with Diane Schenker of the Department of Public Safety, I drafted the bill to have the requests for the information to be made under AS 12.62.160 and to have the regulatory department (or commission as the case may be) review the information. According to Diane the federal government currently accepts record requests under AS 12.62.160 as adequate to access national databases. I also amended the list of offenses in bill section 3 to instead refer to "serious offenses" which are defined in AS 12.62.900 and which seems to reflect recent legislative intent regarding what offenses are "serious" vis-a-vis caregivers of children or the elderly.

I have also included: (1) copies of federal guidelines on criminal history information that I received from Ms. Schenker; (2) a copy of the letter that DPS sent out to licensing and regulatory agencies that request criminal record information; (3) and federal regulations and statutes on this subject.

GPL:pl
99-030.plm

Enclosure

**ALASKA STATUTE 12.62
CRIMINAL JUSTICE INFORMATION SYSTEMS
SECURITY AND PRIVACY**

"Interested Person" Criminal History Record Information AS 12.62.160(8), AS 12.62.160(9) and AS 12.62.160(10); 13 AAC 68.315(b)

INTERESTED PERSON: A person as defined in AS 01.10.06C that employs, appoints, or permits a person to serve with or without compensation in a position in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult.

- **Current Offender Information**

Defined- Information showing that an identifiable person:

(A) is currently under arrest for or is charged with a crime and

(i) prosecution is under review or has been deferred by written or oral agreement;

(ii) a warrant exists for the person's arrest; or

(iii) less than a year has elapsed since the date of the arrest or filing of the charges, whichever is latest;

(B) is currently released on bail or on other conditions imposed by a court in a criminal case, either pretrial or post-trial, including the conditions of the release;

(C) is currently serving a criminal sentence or is under the custody of the commissioner of corrections for supervision purposes; "current offender information" under this subparagraph includes

(i) the terms and conditions of any sentence, probation, suspended imposition of sentence, discretionary or mandatory parole, furlough, executive clemency, or other release; and

(ii) the location of any place of incarceration, halfway house, restitution center, or other correctional placement to which the person is assigned; or

(D) has had a criminal conviction or sentence reversed, vacated, set aside, or has been the subject of executive clemency;

- **Past Conviction Information for which the subject is required to register as a sex offender under AS 12.63.010**

Defined- Conviction for a crime or attempt to commit a crime under:

AS 11.41.410-Sexual Assault in the First Degree

AS 11.41.420-Sexual Assault in the Second Degree

AS 11.41.425-Sexual Assault in the Third Degree

AS 11.41.434-Sexual Abuse of a Minor in the First Degree

AS 11.41.436-Sexual Abuse of a Minor in the Second Degree

AS 11.41.438-Sexual Abuse of a Minor in the Third Degree

AS 11.41.450-Incest

AS 11.41.455-Unlawful Exploitation of a Minor

AS 11.61.125- Distribution of Child Pornography

AS 11.66.110 Promoting Prostitution in the First Degree

and

Former Statutes 11.15.120, 11.15.134, 11.40.110, 11.40.200 or similar laws in another jurisdiction

- **Past Conviction Information if less than 10 years has elapsed from the date of unconditional discharge from the date of the request**

Defined- information showing that an identifiable person who has been unconditionally discharged has previously been convicted of a crime, including
(A) the terms of any sentence, probation, suspended imposition of sentence, or discretionary or mandatory parole; and
(B) information that a criminal conviction or sentence has been reversed, vacated, set aside, or been the subject of executive clemency.

- Past Conviction Information for a serious offense defined in AS 12.62.900, regardless of the date of unconditional discharge
Defined- A conviction for a felony offense, a crime involving domestic violence, or a violation or attempted violation of any of the following laws, or of the laws of another jurisdiction with substantially similar elements:
AS 11.41.410-Sexual Assault in the First Degree
AS 11.41.420-Sexual Assault in the Second Degree
AS 11.41.425-Sexual Assault In the Third Degree
AS 11.41.434-Sexual Abuse of a Minor in the First Degree
AS 11.41.436-Sexual Abuse of a Minor in the Second Degree
AS 11.41.438-Sexual Abuse of a Minor in the Third Degree
AS 11.41.440-Sexual Abuse of a Minor in the Fourth Degree
AS 11.41.450-Incest
AS 11.41.455-Unlawful Exploitation of a Minor
AS 11.41.460-Indecent Exposure
AS 11.51.130(a)(1)-Contributing to the delinquency of a minor, if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed from general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590.
AS 11.51.130(1)(3)-Contributing to the delinquency of a minor, if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed from general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child under 16 years of age to be repeatedly absent from school without just cause.
AS 11.61.110(a)(7)-Disorderly Conduct, exposure of the buttocks
AS 11.66.100-Prostitution
AS 11.66.110-Promoting Prostitution in the First Degree
AS 11.66.120-Promoting Prostitution in the Second Degree
AS 11.66.130-Promoting Prostitution in the Third Degree
and
Former AS 11.40.080, 11.40.110, 11.40.130, and 11.40.200-11.40.420, If convicted prior to 1-01-80



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

February 8, 1996

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

At its meeting on 12/6-7/95, the Criminal Justice Information Services (CJIS) Advisory Policy Board endorsed a motion to have the FBI CJIS Division prepare and distribute examples of language that the states can utilize in preparing future legislation for the purpose of obtaining national criminal history record information (CHRI) on applicants for employment, licensing and other noncriminal justice purposes.

The authority for the FBI to conduct a criminal record check for a noncriminal justice licensing or employment purpose is based upon Public Law (Pub. L.) 92-544. Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

The Attorney General's authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving statutes under Pub. L. 92-544 have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. The standards are:

1. The authorization must exist as the result of legislative enactment;
2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92-544 must be forwarded through the State Identification Bureau (SIB). The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

Following are examples of specific language that the states can utilize in preparing future legislation for the purpose of obtaining national CHRI on applicants for employment, licensing and other noncriminal justice purposes:

1. In order to determine the applicants's suitability for (enter the specific category of employment, license or permit), the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the (enter the name of the SIB) to the FBI for a national criminal history record check.
2. In order to determine the applicant's suitability as a (enter the specific category of employment, license or permit), the (enter the name of the regulatory agency) shall require the applicant to furnish to the (enter the name of the regulatory agency) a full set of fingerprints to enable a criminal background investigation to be conducted. The (enter the name of the regulatory agency) shall submit the completed fingerprint card to the (enter the name of the SIB). The (enter the name of the SIB) is authorized to submit the fingerprints to the FBI for a national criminal history record check.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

3. The (enter the name of the regulatory agency) shall require a background investigation of each applicant for a (enter the specific category of employment, license or permit) by means of fingerprint checks by the (enter the name of the SIB) and the FBI.
4. In addition to other requirements established by law, the submittal of fingerprints shall be a prerequisite to the issuance of a (enter the specific category of permit) by means of fingerprint checks by the (enter the name of the SIB) and the FBI.
5. The (enter the name of the SIB) shall require each person applying for a (enter the specific category of employment or license) pursuant to this section to be fingerprinted. Such fingerprints shall be available for use by the Bureau and for transmittal to the FBI for a national criminal history record check. The information obtained from the national criminal history record check conducted pursuant to this section may be used by the (enter the name of the SIB and/or the name of regulatory agency) to determine the applicant's eligibility for employment or licensing.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

If statutes are enacted or proposed and you would like for the Access Integrity Unit (AIU), CJIS Division to review them to determine if they contain language meeting the requirements of Pub. L. 92-544, we would be glad to do so. As indicated in the foregoing examples, the statute must be specific in nature. To summarize, it must identify the category of applicants, require fingerprinting of the applicants, and authorize submission of the fingerprints to the FBI for a national criminal history record check. A governmental institution within the state must be designated as the screening point for receipt of FBI CHRI.

As a matter of information, access to FBI CHRI is subject to numerous restrictive laws and regulations. Dissemination of such information outside the receiving governmental department or related agency to private entities is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made.

If you have any additional questions concerning this matter, please do not hesitate to contact me or any member of the AIU staff at (202) 324-5050.

Sincerely yours,



Bennie F. Brewer
Chief
Programs Support Section
Criminal Justice Information
Services Division

June 20, 1998

Licensing Agency
Licensing Agency Address

Dear:

As you know, employing and licensing agencies have a need to investigate the backgrounds of individuals being considered for employment in sensitive positions, including those working with children or dependent adults and those who working with confidential personal information, such as securities brokers and insurance agents. To assist in employment and licensing decisions, agencies have implemented procedures requiring a criminal history record background check on potential employees. In some cases, the Alaska Legislature has passed laws requiring a state and national criminal history record background check as a condition of employment or licensing.

The Department of Public Safety, Records and Identification Bureau (R&I) is the Central Repository of Alaska Criminal History Record Information. Requests for criminal history background checks, for licensing or employment, must be submitted through R&I. Procedures, based on Alaska and Federal Law, have been established to respond to these requests. Requests by employing or licensing agencies for State and National criminal history information require the submission of the applicant's fingerprints, and, where appropriate, the payment of an established fee. The Department of Public Safety strives to complete these record checks efficiently and accurately.

The increased demand for these record checks has resulted in processing delays at both the State and National level. The Department of Public Safety wishes to reduce these delays in order to provide your agency with more accurate and timely criminal history record reports. To facilitate this reduction, the Records and Identification Bureau will implement the following changes in national criminal history record check response reporting:

- Currently, when R&I receives a national fingerprint-based criminal history record from the FBI, it is examined for completeness. If disposition information is missing, R&I attempts to determine the outcome of that arrest. Often, this effort is difficult, if not impossible, and results in unacceptable delays of weeks or months in reporting criminal history activity to the requesting agency.
- Effective immediately, any and all criminal history record information reported to R&I by the Federal Bureau of Investigation (FBI), as a result of a fingerprint-based national criminal history record background check, will be relayed, in its entirety, to the government employing/licensing agency. The FBI has authorized this change in procedure.
- R&I will continue its effort to resolve Alaska Criminal History Record case disposition information questions.

- If the licensing agency determines that the national criminal history record is missing disposition information, and the outcome of that particular arrest event could impact the hiring decision, the licensing agency should contact the Central Repository of the state reporting the arrest event directly. The agency may also contact R&I for information on how to obtain disposition information from the reporting state.

Two documents are enclosed to assist you in your employment/licensing decisions. The first is a list of disposition reporting contacts for each state. This list will provide you with the name and contact number to use should additional information be required pertaining to a particular arrest in another state. Please note: state dissemination laws vary and each state must comply with its own law pertaining to the release of criminal history record information for employment or licensing purposes.

The second enclosure is a recently produced publication called *Guidelines for the Screening of Persons Working with Children, the Elderly, and Individuals with Disabilities in Need of Support*. This booklet published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides valuable information related to establishing policies and procedures for screening applicants for sensitive positions. Additional copies are available through this office, or you may order them directly from OJJDP.

This change in the national criminal history record release procedure should result in more complete and timely receipt of this vital information by your agency. Please feel free to contact me at 907-269-5581, if you have any questions or comments relating to this procedural change.

Sincerely,

Kathryn M. Monfreda
Identification Bureau Chief

<Date>

<Client Name, Client number>

<Client Address>

<Contact Person>

Dear <Contact Person>:

Our records indicate that your agency wishes to obtain national criminal history record information for employment or licensing purposes. As you are aware, Federal law/regulation (Title 28 U.S.C. 534, Title 28, Code of Federal Regulations (C.F.R.) 20.33 and Pub L. 92-544) **prohibits the release of any actual data** that may be maintained by the FBI to a non-government agency.

In an effort to assist you in making appropriate employment decisions, you must identify an appropriate government certifying/licensing agency for screening purposes. Please provide this office with the following information:

If your business is certified or licensed by a government agency:

- The name of that Certifying/Licensing agency, R&I Agency Client Number, address and contact person.
- Statutory authority allowing the examination of criminal justice information by that certifying/licensing agency. (A copy of statutes approved by the U.S. Attorney General for dissemination of national criminal justice information is included on page 8.)
- Written verification that this certifying/licensing agency has accepted the responsibility of screening your applicants for employment.
- Please complete page 3 of this letter, and return it to this office within 10 working days.

If your business is *not* certified or licensed (other than your business license) by a government agency:

- Written notice that your business is *not* certified or licensed by a government agency.
- Written verification that your agency intends to request national fingerprint based criminal history background checks pursuant to AS 12.62.160(b)(8-10). This means that you/your agency qualifies as an "Interested Person". An Interested Person is defined as:
 - “A person as defined in AS 01.10.060 that employs, appoints, or permits a person to serve with or without compensation in a position in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult.” [AS 12.62.900(17)]
- A detailed list of **specific criteria** pertaining to criminal history record information that you/your agency utilizes to disqualify employment applicants.

Although this agency cannot provide you legal assistance on what criminal history information is appropriate for disqualification, we will supply, upon request, a copy of a publication entitled "*Guidelines for the Screening of Persons Working with Children, the Elderly, and Individuals with Disabilities in Need of Support*". This booklet published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides valuable information related to establishing policies and procedures for screening applicants for sensitive positions.

- R&I will evaluate your submitted disqualification criteria based on the purpose of your request as defined by AS 12.62, *Criminal Justice Information Systems Security and Privacy Act*. The definition of Criminal Justice Information and a summary of what information is available to a requester according to AS 12.62 are enclosed. Please carefully consider this information when determining your disqualification criteria. For example, if you indicate a desire to disqualify any subject with a criminal record as defined under "Current Offender Information", you will disqualify a person with **any** arrest within the past year, including traffic crimes such as Driving While License Revoked.
- Please complete pages 4 and 5 of this letter, and return them to this office within 10 working days.
- Upon receipt and approval of your criteria for disqualification, your agency will be authorized to receive the enclosed report regarding each applicant for whom you request a fingerprint based criminal history background check. The FBI has approved this form of notification.

Please return the requested information on appropriate form (attached) as soon as possible. This information is necessary to comply with federal law/regulations. Without this information, DPS Records and Identification Bureau will be unable to forward your criminal history record requests to the FBI for a national criminal history record check.

Please contact this office (269-5579) if you have any questions regarding this matter.

Sincerely,

Kathryn M. Monfreda
Identification Bureau Chief

Enc.

To: Records and Identification Bureau
Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

From:

R&I Assigned Client Number: _____

_____ This agency is certified/licensed by the below listed government agency.

Government Agency Name: _____

Government Agency Address: _____

Government Agency Contact Name: _____

Phone Number: _____

Licensing Agency Client Number: _____

Statutory Authority: _____

Enclose written verification that the above listed government agency has accepted the responsibility of screening your applicants for employment.

Completed by: _____

Title: _____

Signature: _____

Date: _____