



SB

273

SENATOR
JOHN J. COWDERY

Anchorage

Committees

Chair: Rules
Chair: World Trade &
State/Federal Relations
Vice-Chair: Transportation
Legislative Council



Senate

January – May:
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Senator_John_Cowdery@legis.state.ak.us

Sponsor Statement

Senate Bill 273

"An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

In 2004, HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act was enacted and became law. Part of this Act directed the Department of Law to submit a report to the Legislature in January 2005 outlining any consumer or enforcement problems associated with AS 08.66.015.

This bill adopts language that addresses the recognized consumer protection and enforcement problems and is consistent with the changes proposed by the Department of Law.

This bill amends current law by deleting the phrase "current model" from AS 08.66.015(a) and adds a section (b) which requires the auto dealers to have a current sales and service agreement with a manufacturer to sell or attempt to sell a car as new. The removal of "current model" is important because with the language left as is, legitimate dealers are unable to sell used vehicle that are still a current year vehicle. For example, a 2006 Ford F-150, that is used cannot be sold by a used car dealer or manufacturer's franchise until the new model vehicles are released later this year. This act also repeals AS 08.66.015(b), which created a situation in which a used, current model vehicle with a warranty, could only be sold by Manufacturer's franchise dealers, effectively barring used car dealers from selling used automobiles that are less than a year old.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE ALASKA 99501-5903
PHONE: (907)269-5100
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February 21, 2006

The Honorable John Cowdery
Chair
Senate Transportation Committee
State Capitol, Room 101
MS 3100
Juneau, AK 99801-1182

Re: SB 273; Sale of Current Model Motor Vehicles

Dear Senator Cowdery;

The Department of Law ("department") has reviewed SB 273. This bill resolves the current enforcement dilemma of AS 08.66.015(a). This statute makes it illegal for any car dealer to sell a current model used vehicle. By removing the restrictive language "current model" from the statute, any motor vehicle dealer will be allowed to sell a used current model vehicle so long as the vehicle is not represented to be "new."

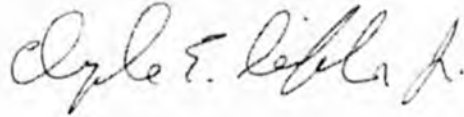
In its current form, AS 08.66.015 is impractical to enforce because it prohibits the sale of used current model vehicles. Thus, a dealer would either refuse to purchase (or take on trade) any current model vehicle, or be forced to "warehouse" the vehicle until it was no longer the current model year. SB 273 will fix this problem.

Please let me know if you have any questions.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:


Clyde E. Sniffen, Jr.
Assistant Attorney General

CES/sjm

**Alaska Auto Dealers Association
5001 Old Seward Highway
Anchorage, AK 99503**

March 24, 2006

Re: Support of SB 273

Dear House Member:

The Alaska Auto Dealers Association Board of Directors unanimously adopted a resolution supporting SB 273 on February 15, 2006. SB 273 will be beneficial to new car dealers, used car dealers and, most importantly, the consumer. Both I and Assistant Attorney General Mr. Ed Sniffen testified in support of this bill in the Senate Labor and Commerce Committee.

The bill cleans up some unintended consequences from a bill passed in 2004. Under the current statute, a dealer is not allowed to take a current model vehicle on trade unless they hold a franchise for the trade in. For example, we are a GMC dealer and are currently selling 2007 GMC Yukons. The 2008 model will not come out until August of 2007. If a customer wanted to trade that vehicle in at any other new or used dealership other than a GMC dealer, they could do so but the dealer would not be allowed to sell the trade in until August of 2007, when the vehicle is no longer "current model". Obviously, this scenario is detrimental to the dealer and consumer who will be penalized monetarily if the dealer can not sell the trade in for eighteen months.

Fortunately, Assistant Attorney General Mr. Sniffen realizes that this law is harmful to all parties and it is not enforced. However, dealers are technically in violation of the law if they take a current model vehicle on trade and the current statute could be enforced tomorrow were it not for the wisdom of Mr. Sniffen.

The AADA supports passage of this bill as we do not want our members to remain in a position of "technically" violating the law and we believe the economic benefits are positive to consumers and dealers.

Please feel free to contact via email or phone at 459-7087 should you have any questions regarding this matter.

Sincerely,

Jon Cook
Legislative Director

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 273
 S) Publish Date: 3/3/06

Revision Date/Time (Note if correction): 2/28/06/ 11:24 a.m. Dept. Affected: Administration
 Title: An Act relating to a motor vehicle dealer's selling RDU: Division of Motor Vehicles
 Component: Motor Vehicles
 Sponsor: Senator Cowdery
 Requester: (S)TRA Component No.: 2348

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends legislation relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties.

This bill will not have a fiscal impact on the Division of Motor Vehicles.

Prepared by: Duane Bannock, Director Phone (907) 269-5008
 Division: Motor Vehicles Date/Time 2/28/06 11:24 a.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/28/2006
 Agency: Administration

adn.com

Anchorage Daily News

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Buyer sues dealer over finance charges**Dealership offered woman higher loan rate, kept part as profit**

By PAULA DOBBYN

Anchorage Daily News

(Published: October 9, 2005)

Erica Hobson bought her dream pickup truck at the right price. Or so she thought.

But the Anchorage woman is in court now, trying to end a practice that the Consumer Federation of America estimates costs car buyers nationwide hundreds of millions of dollars in extra finance costs. Hobson's experience is a cautionary tale for anyone planning to buy a car.

Hobson, 27, spotted a shiny Toyota Tacoma pickup in a Midtown Anchorage dealer's lot during her lunch hour. Later that day in June 2004, she test-drove the used silver-colored truck, made a down payment, signed loan papers for \$23,797 and drove the vehicle home.

"I was really excited," Hobson recalled. "I thought, 'I'll have this Toyota for the next 15 years.' "

Her elation turned to disbelief when Hobson's brother inspected the 2003 truck a week later. The professional auto painter noticed tell-tale signs that the truck had been wrecked: He noticed it had been repainted and parts had been replaced.

Hobson, a paralegal, is suing the dealer, Lithia of Anchorage, for triple damages, which her attorney estimated at \$99,265.68.

Lithia's attorney, June Rohlf, would not comment, saying the company does not discuss pending litigation. In court filings, Lithia acknowledged selling Hobson a vehicle that had sustained damage without revealing that to her. But the company did not engage in deceptive practices or intend to mislead Hobson about the car, Rohlf said in court papers.

The lawsuit has evolved from a case about failure to disclose damage to a vehicle to one that takes on a widespread but little known aspect of auto financing. Hobson claims that Lithia deceived her about the loan interest rate for which she qualified, raising her monthly loan payments and giving Lithia a secret extra payment.

If Hobson wins, she hopes her case will end in Alaska a practice among car dealers and banks called "dealer reserve." It's a practice that can add hundreds, or thousands, of dollars in hidden costs to car buyers.

"You go into these dealerships thinking you can trust that what they represent to you is accurate. While you might expect to dicker, you come to find out that the system is designed to take advantage of you any way it can," Hobson said recently.

Dealers say there's nothing illegal about padding a little extra on to the interest rate. It's a way of compensating themselves for arranging the financing, saving people time and sometimes securing the customer a better rate than they could have gotten on their own.

Consumer interest groups like Public Citizen say hogwash.

<http://www.adn.com/news/alaska/v-printer/story/7065773p-6970498c.html>

10/11/2005



Erica Hobson's lawsuit against Lithia of Anchorage began after her brother noticed signs that her truck had been wrecked before, a fact that wasn't made known to her. (Photo by BILL ROTH / Anchorage Daily News)

"Car-dealer fraud is plaguing our country. The tactics being used are so bad that even informed consumers who do their homework are being taken for hundreds, and often thousands, of dollars," said Public Citizen when it issued a 2003 report titled "Rip-off Nation: Auto Dealers' Swindling of America."

THE DEAL

Hobson says her experience has taught her that financing terms on car loans are just as negotiable as the sales price, and that by getting buyers to accept higher interest rates dealers can boost their profits.

But that knowledge came painfully.

Lithia quoted Hobson three different interest rates before she agreed to accept the lowest one offered: 5.95 percent.

The loan came from Denali Alaskan Federal Credit Union.

But 5.95 percent wasn't the lowest interest rate that Denali said Hobson qualified for. Denali quoted to Lithia a rate of 4.5 percent, according to court filings.

"At no time did Lithia advise plaintiff that Denali had offered a 4.5 percent interest rate on the loan, or that Lithia was going to or did increase the loan interest rate an additional 1.45 percent in order to earn a 'dealer reserve' payment from Denali," Hobson's attorneys said in court papers.

By signing up for the 5.95 percent interest rate, Hobson in effect agreed to pay an extra \$1,100 over the life of her six-year loan.

Denali paid Lithia \$836.64 for signing up Hobson at the higher interest rate, according to paperwork Hobson's lawyers acquired through legal discovery.

In her answer to Hobson's complaint, Rohlf defended the practice of dealer reserves.

"Many courts that have considered this issue agree that there is nothing illegal, deceptive or unfair about 'dealer reserve' practices, and that there is no obligation to disclose the information to customers," Rohlf wrote in court papers.

All financial institutions that work with car dealerships use dealer reserves, said Denali Alaskan spokesman Keith Fernandez on Friday.

While people can generally get better rates if they come into a branch and arrange financing themselves, Denali Alaskan "does view indirect lending as a service to members who don't want to run back and forth between the institution and a dealer to buy a car," Fernandez said.

Several spokespersons for Alaska banks and credit unions said their businesses no longer engage in dealer reserves or never did.

THE WAY IT WORKS

Lawyers and consumer advocates who have studied auto-lending practices say the dealer reserve formula is fairly standard and goes something like this:

Car dealers and lenders form alliances. The bank or credit union agrees to buy car loans from the dealer at a range of interest rates based on the purchaser's creditworthiness. The lowest one the car buyer qualifies for is called the "buy rate."

If the loan is made at the buy rate, the dealer doesn't get any commission.

However, if the dealer gets the purchaser to accept a higher interest rate, the difference between the buy rate and the agreed-on rate is called the spread premium. This premium -- which critics call a kickback and others call a reserve -- is usually split between the car dealer and the lender. Usually the dealer gets a bigger slice, according to consumer advocates.

Dealers rarely disclose this arrangement because they are not required to do so, critics say.

"These hidden finance kickbacks typically add at least \$1,000 to the cost of an auto loan, and are costing consumers as much as one billion dollars annually," Stephen Brobeck, executive director of the Consumer Federation of America, said last year when his organization issued a report on the subject.

IS IT FAIR?

Dealers generally say the reserves they receive are payment for a useful service they provide to customers. They save people the hassle of finding their own financing. They complete a lot of paperwork so all people have to do is sign on the bottom line.

Because of their relationships with lenders, dealers also say they can often get loans for people who otherwise wouldn't qualify, or they can get them better interest rates.

"A lot of times it's not a bad thing because with our buying power we can often get a cheaper interest rate," said Calvin Worthington Jr. of Worthington Ford, a large auto dealer in Anchorage. "We often know about bank specials that are published only to dealers and are not made known to the general public."

But dealers clearly feel under attack by recent high-profile media coverage about dealer reserves, namely "60 Minutes" and "Dateline" pieces.

"Dealer financing is getting a bad rap. A recent wave of negative media reports has focused attention on vocal critics of dealer markups who have called for legislation that would impose either a flat fee or a cap on dealer compensation for obtaining credit for car buyers," said Charley Smith, chairman of the National Automobile Dealers Association, in a speech last year.

Smith said dealers shouldn't hide under their desks but respond by educating people about auto financing, he said. The association's board voted to support disclosing to customers that the finance rate is negotiable and that the dealer may retain part of the finance charges as compensation for helping the buyer secure a loan.

SEEKING RELIEF

Consumer education by auto dealers is fine, but Hobson wants relief for what she went through.

She continues to drive a pickup that was wrecked and worries about her safety if she gets into a crash. If she tried to sell it and properly disclosed the previous damage, Hobson estimates she could get barely half of what she paid for it.

Besides getting her money back and possibly damages, Hobson really wants other people to avoid her experience.

One of her attorneys, Chris Bataille, said Alaska's consumer protection law is strong and that bodes well for his client.

"Our understanding of the law is that businesses shouldn't engage in practices that mislead consumers," Bataille said.

Lithia's attorney said in court papers that nothing misleading took place and that Hobson was not required to accept the 5.95 percent interest rate if she didn't want to.

Trial is scheduled for Nov. 28.

Daily News reporter Paula Dobbyn can be reached at pdobbyn@adn.com or 257-4317.

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SB

298

ALASKA STATE SENATE

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Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 298 Sponsor Statement

“An Act relating to loans from trust property; relating to a trustee’s power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations.”

Senate Bill 298 revises Titles 13 and 34 pertaining to the administration of trust assets. Updates incorporated into Title 13 include the addition of clarifying language relating to: (1) the various powers conferred upon the trustee; (2) trustee reporting requirements, and; (3) claims made against trust assets.

Updates integrated into Title 34 include language pertaining to: (1) the exemption from transfer provisions for certain IRA trust assets; (2) technical corrections made to AS 34.40.110(b), and; (3) the handling of trust assets in cases of divorce or dissolution.

Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country.

But, it is a very competitive environment. In fact, at least seven other states – Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota and Utah – have enacted legislation similar to our own.

The updates proposed in this Bill are in keeping with revisions made to Alaska’s Trust Laws in 1997 and 2003. They are intended to preserve Alaska’s leading position within the universe of trust products and services offered nationwide.

Our laws encourage Alaskan’s to keep their trust assets here in the state. Moreover, capital is *attracted* to Alaska from all over the country creating greater job and investment opportunities for residents of our state.

Senate Bill 298 clarifies prior trust legislation, makes the administration of trusts in Alaska more efficient and cost effective, and will keep Alaska as the jurisdiction of choice for trust administration.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM

March 30, 2006

SUBJECT: Sectional summary of HCS CSSB 298() relating to trusts and estates (Work Order No. 24-LS1113\X)

TO: Senator Ralph Seekins
Attn: Brian

FROM: *tb*
Theresa Bannister
Legislative Counsel

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

Section 1. Amends AS 13.36.109(21) to change that loans from trust property may be made to eligible beneficiaries and eligible third-party entities.

Section 2. Amends AS 13.36.157(a) to change the conditions under which a trustee may appoint the principal of a trust in favor of a trustee of another trust.

Section 3. Amends AS 13.36.157 to add two subsections. AS 13.36.157(d) provides that the governing instrument of a trust that receives principal from another trust may provide that the trust assets of the trust that receives the principal are to be held for the beneficiaries of the invaded trust on the same terms as the invaded trust. AS 13.36.157(e) defines terms for AS 13.36.157.

Section 4. Adds a new section to the probate chapter to coordinate a new provision that is added in bill sec. 11 (sec 13.36.368(b)(3)). States that a trustee may take under sec. 13.36.368(b)(3) the action a personal representative may take under certain statutes in the probate chapter.

Section 5. Amends AS 13.36.100(a) to expand the application of the subsection to more than just final reports.

Section 6. Amends AS 13.36.100(b) to change, for the purpose of barring claims against trustees, the notice period, the notification requirements, and the claim deadline.

Section 7. Amends AS 13.36.100(c) to change the claim commencement period to six months after receipt of a report.

Section 8. Amends AS 13.36.100 to add a new subsection. Indicates what type of notice in a report is considered adequate to notify a beneficiary that there is a time limitation for filing a claim against the trustee.

Section 9. Amends AS 13.36.310(a). Adds that, except as provided in the new cross-reference, the assets of certain qualifying trusts are not subject to the claim of a creditor of the settlor or a creditor of a beneficiary on the grounds that the trust or a transfer to a trust avoids or defeats certain interests.

Section 10. Amends AS 13.36.310(b) to change a cross-reference in the section.

Section 11. Adds a new section that addresses claims against revocable trusts.

Section 12. Amends AS 34.40.110(b) to establish two exemptions (for eligible individual retirement account trusts) from the paragraphs that provide exceptions to the transfer restriction provision.

Section 13. Amends "eligible individual retirement account trust" for the previous bill section.

Section 14. Adds AS 34.40.110(m), a new subsection that provides that if a trust has a transfer restriction, the beneficiary's interest in the trust is not considered property subject to division (or part of a property division) in the event of the divorce or dissolution of the beneficiary's marriage. Limits the application of the section.

Section 15. Repeals the definition of "final report."

Section 16. States that AS 13.36.157(a), (d), and (e) apply to a trust that is created by a will or another instrument before, on, or after the effective date of these subsections.

Section 17. Gives two sections of the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw
06-170.ljw

PERSONAL FINANCE

New IRA Protects Against Lawsuits, Bankruptcy

Two Delaware Trust Firms Offer Retirement Products Shielded by State's Statutes

By RACHEL EDNA SILVERMAN

A NEW TYPE of individual retirement account aims to address an increasing concern among doctors, business executives and other professionals: how to protect your IRA if you're sued or have to file for bankruptcy.

Unlike 401(k)s and other employer-sponsored retirement plans, IRAs generally aren't protected from creditors under federal law. Instead, IRA protection is covered by state laws, which vary. In recent years, a few states, such as Delaware, have also changed their trust laws to offer additional protections that may affect IRAs.

Two Wilmington, Del., trust companies, NatCity Trust Co., a unit of National City Corp. in Cleveland, and Capital Trust Co., now offer souped-up IRAs that are structured to take advantage of the state's generous asset protection and trust laws. These IRAs operate like typical custodial IRAs, where the money is held in a bank or investment firm, but they offer the protection of a trust, which can have special provisions to stave off creditors.

These "Delaware IRAs" are targeted at wealthy professionals who have big retirement accounts and are worried about professional liability. NatCity Trust's president, Jeffrey Getty, says the number of accounts has grown 66% since the start of the year, with the average account size at more than \$1 million. But how effective these IRAs are in keeping creditors at bay is still an open question.

Asset Protectors

The Delaware IRAs are some of the latest offerings of the booming asset-protection industry. The growth of the industry is being driven by increasing concern among doctors, business executives and other professionals concerned about lawsuits and creditors. Financial-services companies and specialized asset-protection lawyers have been rolling out sophisticated trust, partnerships and other ve-



Limited Protection

Keeping individual retirement accounts from creditors is a growing concern, especially among doctors and other professionals worried about lawsuits and bankruptcy. IRA protection varies depending on where you live.

- Unlike employer-sponsored 401(k)s and pensions, IRAs generally aren't protected from creditors under federal law.
- IRA protection depends on state law, which varies. Most states, such as Delaware, have statutes that broadly protect IRAs from creditors, while others, such as Minnesota, have more limited exemptions.
- Delaware also allows IRAs to have "spendthrift" provisions, which are another measure that might keep creditors at bay.

hicles to keep up with the demand for asset protection.

IRAs, however, are a thorny problem in asset-protection planning. Although retirement accounts make up a substantial portion of many people's wealth—there was more than \$3 trillion in IRA assets at the end of last year—the question is whether creditors can pierce IRAs is still an unsettled area of the law.

"It's a complicated area," says Ralph Minto Jr., a Pittsburgh asset-protection lawyer, who has had few physician clients, all Pennsylvania residents, set up Delaware IRAs in the past year because of creditor fears.

The legal landscape for IRA creditor protection is expected to shift further next month when the U.S. Supreme Court weighs in on the issue. The case, *Rousey v. Jacoway*, involves whether funds in IRAs are subject to creditors under Chapter 7 bankruptcy proceedings.

IRAs aren't safe from creditors under the federal Employee Retirement Income Security Act which protects 401(k)s and pension plans. Many states, such as New York, Texas, Florida and Delaware, offer broad protections for IRAs. However, some states, such as California and Minnesota, provide more-limited protection—exempting, for instance, only what is reasonably necessary to support IRA owners and their dependents or limiting the exemption to a specific dollar amount.

Some lawyers and financial advisers are urging clients with creditor concerns to use the Delaware IRA, which might offer stronger protection. These IRAs operate like other retirement accounts, but the twists are in how they are structured. The IRAs are set up as trusts, rather than the typical custodial IRAs. The two vehicles are similar, but trusts are generally more complex and expensive structures to set up. Trusts also can offer greater legal protection against creditors, as well as

more estate-planning options. Individual retirement trusts are popular among the wealthy and are offered by numerous private banks and trust companies.

The Delaware IRAs stand out because they use special language called a spendthrift provision. This spendthrift provision is meant to limit the right of creditors to reach the funds inside the account. Delaware is one of only a few states that permit these spendthrift provisions in trusts, such as IRAs, where the individual setting up the trust is also the beneficiary. Just a handful of financial-services companies, including NatCity and Capital Trust, offer IRA trusts with the spendthrift provision.

The spendthrift clause "puts extra obstacles before creditors, so it's not an easy snatch and grab," says Marc Singer, who has developed many asset-protection plans for clients as a partner at Singer Xenos, a Coral Gables, Fla., wealth-management firm.

The Cost

Fees for Delaware IRAs vary. NatCity charges roughly 1.1% of assets, which includes asset management and requires an account minimum of about \$750,000. (The fee is about half that for just an administrative trust.) Capital Trust, which sells its services through financial advisers, charges 0.3% on the first \$1 million, with a minimum fee of \$1,250. A typical Merrill Lynch custodial IRA is less expensive—0.25% of net assets, with a \$50 minimum annual fee.

But how well Delaware IRAs hold up as asset-protection vehicles is still unclear, since they haven't been tested in court yet. There is still a possibility that a court in another state could rule that the assets in a Delaware IRA are fair game to a creditor outside the state. That's because the U.S. Constitution mandates that each state should have "full faith and credit" in the legal judgments made in other states. So a plaintiff who wins a judgment in a California court might be able to grab funds in an IRA located in Delaware.

Moreover, a Delaware IRA, like all retirement accounts, is still vulnerable in divorce proceedings, since family-court judges have wide discretion in divvying up marital assets. "In divorce, all bets are off," Mr. Singer says.

And since IRAs are already well protected in many states, setting up a Delaware IRA might not be worth the extra hassles or expense of having an out-of-state trustee for many individuals.



March 3, 2006

Honorable Senator Ralph Seekins
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator Seekins:

I am writing this letter in support of SB 298, which as I understand it will implement changes in Alaska trust law that will benefit the trust industry in Alaska. Northrim Bank supports the proposed legislation to the degree that it benefits the trust industry in particular and the general business climate in the state as that facilitates state commerce, adds to the diversity and strength of our economy, and helps to build a stronger customer base for our bank.

I appreciate your work on this legislation.

Yours truly,

Joe Schierhorn
Executive Vice President
Chief Financial Officer

cc: Dick Thwaites
Chairman, Alaska Trust Company

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 298
 (S) Publish Date: 2/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Trusts; Challenges; Claims; Liabilities RDU Banking & Securities (536)
 Component Banking & Securities
 Sponsor Seekins
 Requester Labor & Commerce Component No. 2808

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation makes various changes to AS13.36 which covers the administration of trusts. Provisions in this legislation do not impact the operations of the division.

Prepared by: Mark Davis, Director
 Division: Banking and Securities
 Approved by: William C. Noll, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone 907.465.2521
 Date/Time 2/22/06 5:07 PM
 Date 2/22/2006

SJR

12

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg



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House Judiciary Committee

Memorandum

To: Leg. Legai
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 3, 2005
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-LS0553\G, SJR 12, incorporating the attached amendment. The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you!

The information attached to this memo is **CONFIDENTIAL** and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

Conceptual Amendment #⁵/~~6~~ - PASSED

to CS STR-12 (JUD)

by Rep. McGuire

Add an additional Whereas clause:
We respect our delegations' individual
decisions on how they encourage coming
to an up or down vote.

Page 2, L. 2-4
Delete all material

to CS STR 12(JUD)
by Rep. Grunberg

Amendment #1 - WITTMER

Amendment #2 - FAILED
to CSSTK 12 (JUD) by Gara
Page 2, Line 3:
Replace "G. W. Bush"
with "any President"

A#1 to A#2 - PASSED
Keep "G. W. Bush" and after
Insert "or any president"

Amendment #3 - FAILED

to CS SJR 12 (Jud)

by Gara

Page 2, L. 7

Delete "G. W. Bush."

Insert "any President"

Amendment #4 - FAILED

to CSSTK12(JUD)

by Gara

Delete Page 1, L.15 to Page 2, Line 1.

Amendment #5 - WITHDRAWN

to C8STR12(JUD)

by Rep. Greenberg

Page 2, Line 12-13:

Delete Sen. Lisa Murkowski from list
of addressees. ~~PD~~

Amendment # 6 - FAILED
to CSSTR12 (JUD) by Rep. Gara
Page 1, Line 1 &
Page 2, Line 6

Delete "quickly"
Insert "thoughtfully"

Amendment # 7 - FAILED
to CJSR 12 (JUD) by Rep. Grunberg

Page 1, Line 1 and
Page 2, Line 6

Delete "quickly"
Insert "responsibly"

Michael J. Sexton
President and Publisher

Patrick Dougherty
Senior Vice President & Editor

Steve Lindbeck
Associate Editor

Founded in 1946 by Norman C. Brown

Fuller A. Cowell, Publisher, 1993-1999
Gerald E. Grilly, Publisher, 1984-1993

Kathenne Fanning, Editor and Publisher, 1971-1983
Lawrence Fanning, Editor and Publisher, 1967-1971

OPINION

COMPASS: *Points of view from the community*

President's nominees deserve a vote

By SEN. LISA MURKOWSKI

The use of the filibuster in the United States Senate and the president's judicial nominations have been popular topics of conversation in recent weeks. Print ads, radio spots and television commercials have all highlighted the irrefutable harm — or unquestionable good, depending on your point of view — that the filibuster represents. What is not often mentioned is the impact this debate could have on other items of importance to the country and Alaska, such as ANWR, the energy bill, health care and the highway bill.

Let me make it clear that I support an up-or-down vote on all nominations brought to the Senate floor, regardless of the president nominating them or which party controls the Senate. These nominees deserve to be considered based on their merits. Under the "advice and consent" process, every senator has the right to vote against a nominee if he or she does not believe the nominee is qualified for the position, but it is not fair to the nominees to have their lives placed on hold — sometimes in excess of two years while the process drags on. Nor is it right to perpetuate the many vacancies in our courts, particularly when we are seeing the caseload exceed the capacity of the sitting judges.

Last Congress, 10 of the president's judicial nominees were filibustered. The impasse over these nominees has led the Senate majority leader to consider the possibility of seeking a ruling that the use of the filibuster on judicial nominees is unconstitutional, thus allowing an up-or-down vote on their confirmation. Some have dubbed this the "nuclear option." Democrats have threatened to shut down the Senate through procedural tactics, such as the fil-



I have encouraged Senate leaders on both sides of the aisle to find another way — to allow for an up-or-down vote on judicial nominees while respecting the traditions of the Senate.

buster, if this ruling is agreed to.

There is plenty of blame to go around as to which side has stopped judges in the past — whether on the floor or in committee. But this misses the point of where we are today. The argument shouldn't be about whether we invoke the constitutional option, or "go nuclear," but how we make the confirmation process work. We need to act together as senators to define what is best for the institution. Constructive dialogue over how we achieve the goal — a fair process to confirm fair judges — is necessary.

In April 2003, I joined with all of my fellow freshmen senators in writing to Majority Leader Bill Frist and then-Minority Leader Tom Daschle expressing our concern about the breakdown in the federal judicial nomination and confirmation process. We expressed our hope for a "bipartisan solution that will protect the integrity and independence of our nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us."

What happens if we cannot reach that agreement? At stake for Alaska is much more than whether a judicial nominee is confirmed or not. For the first time in 10 years, the Senate has included a provision in the budget resolution to open ANWR. The House passed an energy bill that in-

cludes ANWR along with a number of other provisions that will benefit Alaska. The Senate has taken up the highway bill that contains a considerable amount of federal dollars for Alaska's infrastructure development. But if the Senate is paralyzed because of the dispute over judicial nominees, none of these bills become law and Alaska does not see the benefits. Alaska has a tremendous opportunity this year in terms of developing our resources, our economy and our future. None of this, however, will matter much if the Senate is locked in partisan wrangling over judicial nominations.

I remain committed to a constructive solution and have encouraged Senate leaders on both sides of the aisle to find another way — to allow for an up-or-down vote on judicial nominees while respecting the traditions of the Senate. It is my sincere hope that we will be able to reach a compromise to enact legislation to stimulate our economy, protect national security and promote the national welfare, and to provide advice and consent, and to vote on the president's nominations.

■ Sen. Lisa Murkowski was appointed to the U.S. Senate in 2002 and elected in 2004. She previously served in the state House of Representatives.

IR VIEW

y and erks

islave salaries nerous and clear

up in Juneau last week when cost formulas caused a drop in the aska legislators from \$204 to \$156. ably and not unreasonably, made geted for one amount and the cut he rate went up to \$189 per day for f basing per diem on federal cost d in 1994, the rate has gone up

rcil was mulling a proposal to hold m sudden drops in the federal for- he people of Alaska harmless from illy and politically, that would be a ward ratchet that looks and is en-

hether Alaska pays its citizen leg- ther the public is getting good value wks could be reduced, and the public mpler and more honest system. makers have had it both ways:

ny by taking a roughly half-time sal- at is too loosely considered part-time f themselves nice per diems based hen they work a few hours in a day in a claim a per diem, albeit reduced, for eimbursed for moving costs, official penses. Even setting aside opportuni-

ould tities for consulting, tempo- rary or part-time jobs on the side — and the quiet chering of interests with

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax (907) 465-3884
SENATE DISTRICT F

Memorandum

To: Representative Lesil McGuire / Chair House Judiciary

From: Senator Gene Therriault

A handwritten signature in black ink, appearing to read "GT" or "Gene Therriault".

Date: April 11, 2005

Re: SJR 12 / Urge vote on Supreme Court Nominees

.....
SJR-12 has been referred to your committee.

I respectfully request scheduling of this measure for committee action at your earliest convenience.

Thank you.

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

SJR 12

Sponsor Statement

It is imperative, as a matter of honorable and responsible public policy to fill any vacancy in the U.S. Supreme Court as soon as possible.

Unfortunately partisan politics, as evidenced through the exploitation of the filibuster rule in the U.S. Senate, has denied a majority vote and subsequent confirmation of numerous judicial nominees submitted by President Bush.

Absent changes to the filibuster rule, similar obstructionist tactics by the Senate minority members disenfranchising nominees, the Judiciary, and U.S. citizens are anticipated.

SJR 12 encourages the U.S. Senate to overcome such tactics and delays by moving quickly to confirm any nominations to the U.S. Supreme Court.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSJR 12(JUD)
 (S) Publish Date: 3/24/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title URGE CONFIRM US SUPREME RDU _____
COURT NOMINEES Component _____
 Sponsor Senator Therriault _____
 Requester Senate Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: SENATE JUDICIARY COMMITTEE Phone _____
 Division _____ Date/Time 3/24/05 9:23 AM
 Approved by: /s/ Senator Seekins, Chair Date 3/24/2005
 Agency _____

SJR

15

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 - Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
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800-862-3878

www.akrepublicans.org/huggins/

Charlie Huggins Senator

May 5, 2005

The Honorable Lesli McGuire, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau AK 99801

RE: SJR 15 (End Tort Law Abuse Against Firearm Industry)

Dear Representative:

Senate Joint Resolution 15 has been read on the House Floor and is referred to your committee. I am writing to request that the bill be scheduled for the earliest convenient hearing before the House Judiciary Committee.

Included with this letter of request is the latest version of the bill, my sponsor statement and more supporting documents.

If you have any questions about the bill or require further information, please feel free to call me at any time. Thank you for your consideration of this request.

Sincerely,

Senator Charlie Huggins

Enclosures

schedule (yes)



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
(916) 446-2455 voice ★ (916) 448-7469 fax
www.nraila.org

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

April 19, 2005

TO: Alaska State Legislators
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: Senate Joint Resolution 15 – SUPPORT

On behalf of the more than 24,000 NRA members living in the State of Alaska, I respectfully urge your support for Senate Joint Resolution 15. SJR 15 would urge Congress to pass S. 397 and H.R. 800, the "Protection of Lawful Commerce in Arms Act," federal legislation which would address the reckless lawsuits being filed against the firearms industry.

S. 397 and H.R. 800 provide that lawsuits may not be brought against manufacturers and sellers of firearms and ammunition if the suits are based on criminal or unlawful use of the product by a third party. Existing lawsuits must be dismissed. These suits are intended to drive gun makers out of business by holding manufacturers and dealers liable for the criminal acts of third parties who are totally beyond their control. Suing the firearms industry for street crimes is like suing Budweiser or General Motors for drunk driving accidents.

S. 397 and H.R. 800 grant carefully tailored protection for legitimate suits by expressly allowing actions based on knowing violations of federal or state law related to gun sales, or on traditional grounds including negligent entrustment (such as sales to a child or to an obviously intoxicated person) or breach of contract. The bills also allow product liability cases involving actual injuries caused by an improperly functioning firearm (as opposed to cases of intentional misuse).

Reckless lawsuits usurp the authority of the Congress and of state legislatures, in a desperate attempt to enact restrictions that have been widely rejected. Thirty-three states, including Alaska, have enacted statutes blocking this type of litigation. Congress should follow their lead.

Senate Joint Resolution 15 is intended to help move Congress in the direction of enacting this important protection and, thus, the National Rifle Association asks for your support of this measure.

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Protection of Lawful Commerce in Arms Act (Placed on Calendar in Senate)

S 397 PCS

Calendar No. 15

109th CONGRESS

1st Session

S. 397

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

IN THE SENATE OF THE UNITED STATES

February 16, 2005

Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, Mr. SUNUNU, Mr. ALLEN, Mr. VITTER, and Ms. LANDRIEU) introduced the following bill, which was read the first time

February 17, 2005

Read the second time and placed on the calendar

A BILL

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Lawful Commerce in Arms Act'.

SEC. 2. FINDINGS; PURPOSES.

(a) Findings- Congress finds the following:

- (1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.
- (2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.
- (3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.
- (4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms

Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) Purposes- The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under art. IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) In General- A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of Pending Actions- A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ENGAGED IN THE BUSINESS-** The term 'engaged in the business' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) **MANUFACTURER-** The term 'manufacturer' means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) **PERSON-** The term 'person' means any individual, corporation, company, association, firm, partnership, society, joint stock

company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT**- The term 'qualified product' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION**-

(A) **IN GENERAL**- The term 'qualified civil liability action' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include--

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including--

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product; or

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.

(B) **NEGLIGENT ENTRUSTMENT**- As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) **RULE OF CONSTRUCTION**- The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) **SELLER**- The term 'seller' means, with respect to a qualified product--

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) **STATE**- The term 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) **TRADE ASSOCIATION**- The term 'trade association' means--

(A) any corporation, unincorporated association, federation, business league, professional or business organization or

organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE- The term 'unlawful misuse' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

Calendar No. 15

109th CONGRESS

1st Session

S. 397

A BILL

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

February 17, 2005

Read the second time and placed on the calendar

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Protection of Lawful Commerce in Arms Act (Introduced in House)

HR 800 IH

109th CONGRESS

1st Session

H. R. 800

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages or injunctive or other relief resulting from the misuse of their products by others.

IN THE HOUSE OF REPRESENTATIVES

February 15, 2005

Mr. STEARNS (for himself, Mr. BOUCHER, Mr. SMITH of Texas, Ms. HART, Mr. BARTLETT of Maryland, Mr. BASS, Mr. ROGERS of Michigan, Mr. BLUNT, Mr. WILSON of South Carolina, Mr. PEARCE, Mr. REYNOLDS, Mrs. CUBIN, Mr. BRADY of Texas, Mr. BOEHLERT, Mr. NUSSLE, Mr. TERRY, Ms. PRYCE of Ohio, Mr. BAKER, Mr. BRADLEY of New Hampshire, Mr. SIMPSON, Mr. BOEHNER, Mrs. BLACKBURN, Mr. MCHUGH, Mr. SOUDEF, Mr. WICKER, Mr. CANNON, Mr. BOYD, Mrs. MUSGRAVE, Mr. GARRETT of New Jersey, Mr. MANZULLO, Mr. GINGREY, Mr. DAVIS of Kentucky, Mr. MARSHALL, Mr. BONILLA, Mr. CANTOR, Mr. BACA, Mr. TANNER, Mr. LEWIS of Kentucky, Mr. SCOTT of Georgia, Mr. MICHAUD, Mr. LARSEN of Washington, Mr. HOLDEN, Mr. BERRY, Mr. TAYLOR of North Carolina, Mr. MCCRERY, Mrs. JO ANN DAVIS of Virginia, Mr. GARY G. MILLER of California, Mrs. MILLER of Michigan, Mr. SWENEY, Mr. PENCE, Mr. DAVIS of Tennessee, Mr. AKIN, Mr. CHOCOLA, Mr. THOMAS, Mr. PETERSON of Minnesota, Mr. GILLMOR, Mr. SULLIVAN, Mr. STRICKLAND, Mr. FOLEY, Mr. NUNES, Mr. ROGERS of Kentucky, Mr. CULBERSON, Mr. OTTER, Mr. WALDEN of Oregon, Mr. REHBERG, Mr. GOHMERT, Ms. HERSETH, Mr. GIBBONS, Mr. BURGESS, Mr. WESTMORELAND, Mr. CARTER, Mr. SESSIONS, Mr. ENGLISH of Pennsylvania, Mr. RENZI, Mr. BONNER, Mr. KANJORSKI, Mr. SHUSTER, Mr. GENE GREEN of Texas, Mr. PICKERING, Mr. GOODE, Mr. ROGERS of Alabama, Mr. GORDON, Mrs. CAPITO, Mr. EVERETT, Mr. YOUNG of Alaska, Mr. TAYLOR of Mississippi, Mr. HENSARLING, Mr. MORAN of Kansas, Mr. BARRETT of South Carolina, Mr. RYUN of Kansas, Mr. MARCHANT, Mr. MACK, Mr. ADERHOLT, Mr. HEFLEY, Mr. COOPER, Mr. CALVERT, Mr. HAYWORTH, Mr. FRANKS of Arizona, Mr. ISSA, Mr. DINGELL, Mr. TANCREDO, Mr. RAHALL, Mr. SIMMONS, Mr. MILLER of Florida, Mr. THORNBERRY, Mr. POMBO, Mr. KELLER, Mr. HERGER, Mr. DOOLITTLE, Mr. SCHWARZ of Michigan, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages or injunctive or other relief resulting from the misuse of their products by others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Lawful Commerce in Arms Act'.

SEC. 2. FINDINGS; PURPOSES.

(a) Findings- The Congress finds the following:

- (1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.
- (2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by the Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups, and others attempt to use the judicial branch to circumvent the legislative branch of the Government by regulating interstate and foreign commerce through judgments and judicial decrees, thereby threatening the separation of powers doctrine and weakening and undermining important principles of federalism, State sovereignty, and comity among the several States.

(b) Purposes- The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the separation of powers doctrine and important principles of federalism, State sovereignty, and comity among the several States.

(7) To exercise the power of Congress under article IV, section 1 of the United States Constitution to carry out the full faith and credit clause.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) In General- A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of Pending Actions- A qualified civil liability action that is pending on the date of the enactment of this Act shall be dismissed immediately by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ENGAGED IN THE BUSINESS-** The term 'engaged in the business' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution

of ammunition.

(2) **MANUFACTURER**- The term 'manufacturer' means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) **PERSON**- The term 'person' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT**- The term 'qualified product' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION**-

(A) **IN GENERAL**- The term 'qualified civil liability action' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include--

(i) an action brought against a transferor or convicted of an offense under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, if the violation was a proximate cause of the harm for which relief is sought, including--

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of the qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of the qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product; or

(v) an action for death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that if the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injury, or property damage.

(B) **NEGLIGENT ENTRUSTMENT**- As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) **RULE OF CONSTRUCTION**- The exceptions set forth in clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) **SELLER**- The term 'seller' means, with respect to a qualified product--

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE- The term 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION- The term 'trade association' means any corporation, unincorporated association, federation, business league, or professional or business organization--

(A) that is not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE- The term 'unlawful misuse' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

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Lawsuit Against Firearm Industry Thrown Out of Ohio Court

Constitution Front Page Opinion (Published) Keywords: GUNS / GUN OWNERSHIP / 2ND AMENDMENT

Source: N.R.A. WWW.NRA.ORG

Published: 10/7/99 Author: BOB EVANS, REPUBLICAN CONGRESSIONAL CANDIDATE vs TOM LANTOS for 2000

Posted on 10/07/1999 14:02:52 PDT by [Bob Evans](#)

Untitled Document

NEWS RELEASE**Lawsuit Against Firearm Industry Thrown Out of Ohio Court***NRA hails dismissal "with prejudice" as first of many proving lack of merit of suits brought by greedy lawyers and scapegoating mayors*

(WASHINGTON, DC) -- Municipal lawsuits that attempt to hold lawful, legitimate manufacturers liable for criminal misuse of their products have no legal merit. That is the message of today's decision by an Ohio state judge in dismissing with prejudice the suit filed by Cincinnati -- the first such lawsuit to reach court disposition.

"This is a major victory for those who believe, as NRA members believe, that we must hold criminals accountable for their crimes," said James J. Baker, executive director of NRA's Institute for Legislative Action. "And this dismissal is a major blow for the greedy attorneys seeking enormous contingency fees and for the mayors seeking scapegoats to blame for their own failure to enforce current laws and prosecute violent criminals. We are confident that other cities that have filed such reckless lawsuits will soon hear the same message."

Baker noted that most Americans oppose these types of lawsuits. "In poll after poll, the vast majority of Americans believe these suits are wrong," Baker said. "The very notion of trying to hold a third party that operates in total compliance with the law responsible for the deviant, criminal actions of another is a notion that flies in the face of common sense and our system of American jurisprudence."

The decision to dismiss the case "with prejudice" means the City of Cincinnati cannot attempt to amend and refile the suit. The defendants include Sturm Ruger & Co., Beretta Corp. U.S.A., and Colt's Manufacturing Co.

"I commend Judge Ruehlman for understanding the Constitutional importance of the separation of powers, and for clearly stating that policy issues are reserved to the legislature," Baker said. The opinion states that, "the City's complaint is an improper attempt to have this Court substitute its judgement for that of the legislature ... only the legislature has the power to engage in the type of regulation that is being sought by the City here. Moreover, the City's request ... exceeds the scope of its municipal powers and ... violates the Commerce Clause of the United States Constitution."

During the past year, the NRA has successfully worked to enact legislation in thirteen states to prohibit municipalities from filing such frivolous lawsuits against firearms manufacturers. Included are Georgia and Louisiana, states in which such suits had been filed. Baker said NRA would continue that legislative effort next year, an effort that is drawing greater support as it has become more evident that the suits lack merit.

For more information, see <http://www.FreeRepublic.com/per/redirect?u=http%3A%2F%2Fnra.org%2Fresearch%2F19990825-LawsuitPreemption-001.shtml> "Judicial Lawsuits" Against Gun Makers.

Having difficulty finding ILA-related info? Try our [FAQ](#) page.

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Munitions & Logistic Information Services

Homepage established 1994 by the NRA Institute for Legislative Action
11250 Waples Mill Road, Fairfax, VA 22030

Another interesting news item I felt you should see ...

Bob Evans
Republican Congressional Candidate vs Tom Lantos for 2000
340 Fourster St.
SF, CA 94112
415-334-9923

Please stop by my campaign web site and support a 2000 Congressional Candidate that has the balls to stand up for the 2nd Amendment of the Constitution!

Click here to enter: [BOB EVANS FOR U.S. CONGRESS 2000](#)

1 Posted on 10/07/1999 14:02:52 PDT by [Bob Evans \(bob0159@pacbell.net\)](#)
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To: [Bob Evans](#)

Herry for us! P'm on HCl, Clintonite, and d e rest of the socialist. Great post Bob!

2 Posted on 10/07/1999 14:07:04 PDT by [rboque](#)



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News

California Cities Cases Against Firearms Industry Rejected on Appeal

Court rules that "unfair trade practice" and "public nuisance" lawsuits were properly dismissed by the trial court.

SOUTHPORT, CT -- February 11, 2005 -- Sturm, Ruger & Company, Inc., (NYSE: RGR) the nation's largest firearms manufacturer, is pleased to announce that on February 10, 2005, the First Appellate District, Division One, in the Court of Appeals of the State of California, unanimously affirmed that the "unfair trade practice" and "public nuisance" lawsuits filed by San Francisco, Berkeley, Sacramento, Los Angeles, Compton, Inglewood, and West Hollywood, and the counties of San Mateo and Alameda, were properly dismissed by the trial court (In re Firearms Cases, The People et al. v. Arcadia Machine & Tool, Inc. Et al., No.'s A103211, A105309, Judicial Council Coordination Proceeding No. 4095, decided 2/10/05).

This is the latest in a long string of cases at both the trial and appeals court levels holding that manufacturers of lawfully-sold, non-defective firearms are not legally at fault if these products are subsequently illegally acquired or misused by criminals.

In dismissing plaintiff's claims against firearms manufacturers and distributors, the Appeals Court stated, "We conclude that endorsing the theory in this case would stretch the already expansive boundaries of the UCL (California's Unfair Competition Act) beyond any principled reading of the statute. In addition, supervision of the sweeping measures sought would be a Herculean task for court oversight."

The court continued, "No evidence in this case hints that any of the manufacturer defendants provided weapons to criminals or failed to properly record sales or did any of the other acts that plaintiffs characterize as high-risk business practices. They did not control the wrongful acts or encourage others to engage in questionable acts. Neither did they change their business practices to avoid proposed regulations or advise retailers on ways to circumvent the law. The record in this case shows that the only business practice that these defendants engage in is the manufacture and sale of firearms to dealers that are licensed as such by the federal government. Plaintiffs have cited no cases finding a manufacturer has engaged in an unfair practice solely by legally selling a non-defective product based on actions taken by entities further along the chain of distribution. Even plaintiffs' experts could not present an evidentiary link between the manufacturer of a firearm and a retail gun dealer who sold guns that ended up in criminal circumstances."

"Establishing public policy is primarily a legislative function and not a judicial function, especially in an area that is subject to heavy regulation. None of the evidence presented by plaintiffs support the conclusion that a manufacturer who does not undertake the kind of investigation and remedial action urged by plaintiffs and their experts has engaged in an unfair practice", continued the court.

The court concluded, "The case has progressed beyond the pleading stage and the plaintiffs have been unable to produce evidence to show the existence of a triable issue of material fact on the pleaded theories...Plaintiffs' public nuisance claim falls for lack of any evidence of causation. Their complaint attempts to reach too far back in the chain of distribution where it targets the manufacturer of a legal, non-defective product that lawfully distributes its product only to those buyers licensed by the federal government."

Sturm, Ruger President and General Counsel, Stephen L. Sanetti commented, "It should be apparent by now that, after almost seven years of intensive and costly litigation which has burdened both taxpayers and industry alike, the time has to come for plaintiffs to abandon their adversarial position against our industry, particularly at a time when national security is at stake."

"Unfortunately, at the behest of zealous agenda-driven organizations, some mayors seem determined to continue such litigation abuse despite prior court rulings. The only sure way to finally stop this wasteful litigation is swift enactment of the protection of Lawful Commerce in Arms Act as part of needed tort law reform to be considered by Congress."

"Court after court has found our responsible sales and marketing practices in this heavily-regulated industry to be

appropriate and legally correct. Violent crime is at a twenty year low, and firearms accidents are at an all-time low, due at least in part on many voluntary efforts of the responsible firearms industry," he continued.

"Let's work together with law enforcement on proven programs to surely and swiftly prosecute criminals who abuse firearms, and to help educate lawful firearms owners on proper firearms safety measures, to keep these trends going in the right direction," Sanetti concluded.

Sturm, Ruger is the nation's leading manufacturer of high-quality firearms for recreation and law enforcement, and a major producer of precision steel and titanium investment castings components for consumer industries. Sturm, Ruger is headquartered in Southport, CT, with plants and foundries located in Newport, NH and Prescott, AZ.

Find this article at:

<http://www.shootingtimes.com/firearm021105>

The Nation

Federal Judge Dismisses NAACP Suit Against Gun Industry

By Jeff Johnson

CNSNews.com Congressional Bureau Chief

July 21, 2003

Capitol Hill (CNSNews.com) - The latest attempt by opponents of the Second Amendment to hold the firearms industry responsible for the actions of individuals who misuse guns to commit crimes failed Monday. The U.S. District Court for the Eastern District of New York accepted a May 14 advisory jury ruling against the National Association for the Advancement of Colored People (NAACP) and several anti-gun groups that joined in the lawsuit.

Lawrence Keane, vice president and general counsel of the National Shooting Sports Foundation (NSSF), said Senior Federal District Judge Jack B. Weinstein did the right thing but went about doing it the wrong way.

"We are clearly pleased by the ultimate outcome of the case," Keane said. "We are, of course, disappointed, but not all that surprised by the route that Judge Weinstein takes because we think that the decision ... ignores New York law and is a slap in the face to the findings of the advisory jury."

After hearing six weeks of testimony, an advisory jury found that none of the firearm industry defendants had created a "public nuisance" as claimed by the NAACP. Weinstein rejected the jury's finding, but, based on the same testimony, still dismissed the case because, he said, the NAACP failed to prove that it had suffered any "special injury" as a result of the defendants' actions.

The NAACP filed the suit in 1999 - with the help of the Brady Center to Prevent Gun Violence (formerly Handgun Control, Inc.), the Violence Policy Center (VPC) and other anti-gun organizations - attempting to hold the gun industry liable for what it called "marketing practices that resulted in a proliferation of handguns in many communities."

The NAACP did not return calls seeking comment prior to the deadline for this report.

Federal judge hears case, but state law applies in 'diversity jurisdiction'

As a federal judge, Weinstein presided over the case under federal "diversity jurisdiction" rules that allow federal courts to hear suits in which the defendants and plaintiffs do not reside in the same jurisdiction. Although the case is heard in federal court, the judge is bound by the laws of the state in which the suit is filed.

The appellate division of the New York Supreme Court ruled June 24 that manufacturers of lawful and non-defective products such as firearms cannot be sued under New York law for allegedly creating a "public nuisance" when criminals misuse those products.

"The lawful manufacture, marketing and sale of a defect-free product in a highly regulated activity [is] far removed from the downstream, unlawful use of handguns," the appeals court said, adding "that courts are the least suited, least equipped and thus the least appropriate branch of government to regulate and micro-manage the manufacturing, marketing, distribution and sale of handguns."

The decision upheld an August 2001 ruling in which New York Supreme Court Justice Louis York also dismissed the lawsuit against the gun industry filed by New York Attorney General Eliot Spitzer. York also found that Spitzer failed to tie the industry directly to the alleged "public nuisance" created by criminals misusing firearms.

"It is obvious that the parties most directly responsible for the unlawful use of handguns," York wrote, "are the individuals who unlawfully use them."

Firearms industry believes suits intended to legislate through the courts

In a press release following the May 14 jury recommendation, the NSSF called the NAACP lawsuit "an attempted end-run around Congress and state legislatures."

"This case is also an unconstitutional attempt by this court and radical, anti-gun zealots - who are orchestrating and funding this lawsuit - to impose through litigation a gun control agenda repeatedly rejected by Congress and not supported by most Americans," the NSSF stated.

Erich Pratt, communications director for Gun Owners of America, told CNSNews.com that he believes anti-Second Amendment forces have an even more sinister, underlying agenda.

"They've failed at enacting many of the gun control proposals they've sought, and so now, they're using the court to try to force the gun makers to impose these gun controls upon themselves," he said, "or they're trying to put the gun makers out of business."

The NAACP announcement of the lawsuit on July 12, 1999, lends credence to Pratt's latter assertion.

"And so, the NAACP will be filing litigation this week in the United States District Court against the gun industry in an effort to break the backs of those who help perpetuate this over saturation of weapons in our communities," the group's president, Kweisi Mfume, said. (Emphasis added.)

Pro-gun groups say legislation needed to stop 'frivolous suits'

In a press release responding to the May 14 recommendation, Mfume expressed "disappointment" at the jury's ruling against his group.

"When you consider that Congress is now moving to pass legislation that would prohibit lawsuits such as ours," he said, "it's only a matter of time before more innocent Americans become victims of violence as a result of the availability of illegal weapons."

The NSSF believes, however, that lawsuits attempting to hold gun makers and dealers responsible for acts committed by criminals "will not stop a single crime from occurring."

"The unfair abuse of our legal system - to burden innocent people and law-abiding companies with tremendous costs to defend their innocence - points to the reason legislation now awaiting Senate action must be passed," Keane said.

The legislation to which Mfume and Keane referred is the Protection of Lawful Commerce in Arms Act ([S. 659](#)), which has 54 cosponsors and passed the House by a vote of 285-140.

In a newspaper advertising campaign begun last Thursday in the *New York Times*, the Brady Center claims the bill will "let gun dealers get away with murder."

"Quietly sneaking through the United States Senate is an outrageous bill which will slam the courthouse door shut on countless victims of gun crimes," the ad argues. "Believe it or not, this bill...actually immunizes negligent gun dealers and gun makers against lawsuits."

The ad also charges that the bill "is a 'Stay out of Court Free' pass, exempting the gun industry from legal rules that bind every other industry in America."

Pratt told CNSNews.com that the Brady Campaign has either not read the proposed law or is intentionally misrepresenting its content to the public.

"Their ad is entirely ignorant and outrageous," he said, "and flies in the face of reality."

The NSSF agrees.

"[T]his popular legal reform does not grant any special protection or blanket immunity for firearms manufacturers," the group said in a statement about the bill. "Contrary to what groups like the Brady Center to Prevent Handgun Violence claim, it would not stop injured parties from bringing legitimate lawsuits, on well-established legal theories, against members of the firearms industry."

The NSSF argues that "a plaintiff truly injured by a defective product, an illegally sold firearm or a firearm sold by a dealer to an irresponsible person would still be able to bring a lawsuit against a firearm manufacturer or dealer."

A Congressional Research Service (CRS) summary of the bill is nearly identical to the NSSF interpretation.

According to the CRS, the Protection of Lawful Commerce in Arms act would only block or require to be dismissed lawsuits "against a manufacturer or seller of a firearm, ammunition or a component of a firearm that has been shipped or transported in interstate or foreign commerce, or against a trade association of such manufacturers or sellers, for damages resulting from the criminal or unlawful misuse of a firearm." (Emphasis added.)

The proposal would specifically allow lawsuits to continue or be filed in the future:

- Against a seller for negligence per se, or negligent entrustment;
- For physical injuries or property damage resulting directly from a defect in design or manufacture of the firearm when used as intended;
- Against anyone who transfers a firearm knowing that it will be used to commit a crime of violence or a drug trafficking crime;
- Against a manufacturer or seller of a firearm who willfully violated a state or federal statute applicable to the sale or marketing of the firearm [if] the violation was a proximate cause of the harm for which relief is sought; or
- For breach of contract or warranty in connection with the purchase of the firearm.

Courts would be required to examine the claims made in a lawsuit against any of the parties covered by the bill. Only if the suit claimed "damages resulting from the criminal or unlawful misuse of a firearm" would the judge be required to dismiss the suit. All other claims would proceed.

Pratt said the continued attempts by anti-gun forces to use lawsuits to obtain what they can't get through legislation make passage of the Protection of Lawful Commerce in Arms act vital.

"The bottom line is," he concluded, "it's simply wrong to punish gun makers for selling a legal and constitutionally protected product in a lawful manner."

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