11925 SENATE LABOR & COMMERCE

SB

312

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 12, 2006

SUBJECT: CSSB 312(L&C) relating to the promotion of live public events (Work Order No. 24-LS1548\I)

TO: Senator Con Bunde
Chair of the Senate Labor and Commerce Committee
Attn: Jane

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

AS 08.92.070(2) exemption. Under the bill a promoter may be an organization. The residency requirement in AS 08.92.070(2) appears intended for promoters who are individuals, not organizations. Although an organization is not really able to be a "resident" of a municipality, language could be added to the bill to require that an organization must meet another requirement to satisfy the exemption (e.g., having an office or property in the municipality).

If I may be of further assistance, please advise.

TLB:med
06-299.med

Enclosure

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 312
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: Concert or Athletic Event Promoters
RDU: Corp, Bus & Prof Licensing (117)
Component: Corp, Bus & Prof Licensing
Sponsor: Labor & Commerce
Requester: Labor & Commerce
Component No.: 2360

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						
CHANGE IN REVENUES (1156)	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
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 regulates the promotion of live public events when tickets are sold in advance. New funds are not required to implement the provisions of this bill.

Prepared by: Katherine Mason, Administrative Manager
Phone (907) 465-2144
Division: Corporations, Business and Professional Licensing
Date/Time 3/31/06 0:20 PM
Approved by: William C. Noll, Commissioner
Date 3/31/2006
Agency: Commerce, Community, and Economic Development

(Revised 9/7/2005 OMB)

Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Labor & Commerce
Current Version: SB 312
Contact: Jane Alberts, 465-4843

Fact Sheet for: Senate Bill 312

Short Title: CONCERT OR ATHLETIC EVENT PROMOTERS

Summary:

- Extends statutes relating to the promotion of concerts to include all covered events.
- Requires the owner or manager of the site where a covered event occurs to verify that the promoter either has a valid promoter's certificate of registration, or is exempt.
- Requires promoters to provide ticket refunds within 30 days after cancellation of a scheduled event.
- Clarifies the defintion of promoter to include a person who produces, stages, or organizes a covered event.
- Defines "covered event" as a live event that is open to the public through the purchase of a ticket and for which tickets may be purchased in advance, including an athletic event, concert, exhibition, rodeo or dramatic performance.
- Requires promoters to file a cash deposit of $5,000 with the Department of Commerce, Community and Economic Development or deposit $5,000 in a trust account to cover possible refunds.

Benefits:

- Provides greater consumer protection.

Background:

- SB 312 guarantees that ticket holders receive a refund for the purchase price of their ticket if a live public event is cancelled in the State of Alaska.

  Under current Alaska Statutes a concert promoter must receive a promoter's certificate of registration issued by the Department of Commerce, Community, and Economic Development. If the concert is cancelled, the promoter is required to refund the ticket price within ten days after the scheduled date of the concert, or be subject to a fine or imprisonment for up to five years.

  Senate Bill 312 extends those obligations to the promoters of all covered public events, and changes the deadline for refunding the purchase price from 10 days to within 30 days. If the promoter fails to do so, the State can provide the refund to unsatisfied ticket holders through the escrow account. Senate Bill 312 excludes 501(3)(c) non-profit corporations, groups or societies qualified for non-profit status only if they receive all of the proceeds from a covered event.

24-LS1548\Y
Bannister
3/27/06

CS FOR SENATE BILL NO. 312( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the promotion of live public events for which tickets are sold in advance."

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

*** Section 1.** AS 08.01.010(11) is amended to read:

(11) regulation of **covered event** [CONCERT] promoters under AS 08.92;

*** Sec. 2.** AS 08.92.010 is amended to read:

Sec. 08.92.010. Registration required. A person may not engage in the business of promoting **a covered event** [CONCERTS] in the state without a valid promoter's certificate of registration issued by the department. To remain valid, a certificate of registration must be renewed on a date set by the department.

*** Sec. 3.** AS 08.92.020(a) is amended to read:

(a) An applicant for a promoter's certificate of registration shall pay **the fees** [AN ORIGINAL REGISTRATION FEE] established by regulations adopted under

AS 08.01.065.

* **Sec. 4.** AS 08.92.030 is amended to read:

Sec. 08.92.030. Cash [BOND OR CASH] deposit or escrow account required. A promoter [OF CONCERTS] shall, at the time of applying for a certificate of registration, (1) file with the department a [SURETY BOND OR AN EQUIVALENT] cash deposit in the amount of $5,000, or (2) [. AS AN ALTERNATIVE TO THE BOND OR CASH DEPOSIT, A PROMOTER MAY] deposit $5,000 in an escrow [A TRUST] account in a bank or [,] savings and loan association, or with a licensed escrow agent [50 PERCENT OF THE ADVANCE TICKET RECEIPTS ACCUMULATED FOR EACH CONCERT PROMOTED,] and provide the department with the number and location of the [TRUST OR] escrow account. The [BOND,] cash deposit [,] or account must [SHALL] be conditioned upon the promoter providing ticket refunds within 30 [10] days after the scheduled date of a covered event that [CONCERT WHICH] is cancelled due to any cause. The state, on behalf of a ticket holder, or a ticket holder directly, may bring an action on the [BOND,] cash deposit [,] or account.

* **Sec. 5.** AS 08.92.035 is amended to read:

Sec. 08.92.035. Refund caption required. Tickets for a covered event [CONCERTS] subject to the provisions of this chapter shall be printed with the name and business address of the promoter and the following caption: "In the event of the cancellation of the event [CONCERT CANCELLATION], refunds will be available at the above location between the hours of 9:00 a.m. and 5:00 p.m. for a period of 30 [10] days after the scheduled date of the event [CONCERT]."

* **Sec. 6.** AS 08.92 is amended by adding a new section to read:

Sec. 08.92.045. Verification of registration or exemption. A person who owns or manages the site where a covered event will occur shall, before the promoter of the covered event sells a ticket to the event, verify that the promoter has a valid promoter's certificate of registration issued under this chapter or is exempt from this chapter under AS 08.92.070.

* **Sec. 7.** AS 08.92.060(b) is amended to read:

(b) Retention of ticket receipts after the 30th [10TH] day following the

scheduled date of a **covered event** [CONCERT] that has been cancelled is presumed to be fraud against ticket purchasers. A promoter who fails to refund the purchase price of a ticket to a **covered event that** [CONCERT WHICH] has been cancelled and retains the ticket receipts after the **30th** [10TH] day following the scheduled **event** [CONCERT] that has been cancelled is guilty of

(1) a misdemeanor, if ticket receipts retained are $1 000 or less, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both;

(2) a felony, if ticket receipts retained are more than $1,000, and upon conviction is punishable by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both.

*** Sec. 8.** AS 08.92.070 is amended to read:

Sec. 08.92.070. Exemption. The provisions of this chapter do not apply to **a covered event** [CONCERTS] promoted, organized, or produced

[(1)] by a nonprofit corporation, society, or group that has qualified for nonprofit status under **26 U.S.C. 501(c)(3) (Internal Revenue Code) if all of the proceeds from the covered event go to the nonprofit corporation** [SEC. 501(c)(3) OF THE INTERNAL REVENUE CODE (26 U.S.C. 501(c)(3));

[(2) BY A PROMOTER FOR PRESENTATION WITHIN A MUNICIPALITY HAVING A POPULATION OF LESS THAN 10,000 PERSONS].

*** Sec. 9.** AS 08.92.090(3) is amended to read:

(3) "promoter" means a person who **produces, stages,** contracts for, **organizes,** and arranges a **covered event** [CONCERT] for purposes of profit whether engaged full time or part time in the business of booking or hiring **covered events** [CONCERTS].

*** Sec. 10.** AS 08.92.090 is amended by adding a new paragraph to read:

(4) "covered event" means a live event that is open to the public through the purchase of a ticket and for which tickets may be purchased in advance; "covered event" includes an athletic event, a concert, an exhibition, a rodeo, and a dramatic performance.

*** Sec. 11.** AS 08.92.020(b) and 08.92.090(1) are repealed.

Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair, Senate Finance Committee
Chair, Senate Labor & Commerce Committee

Sponsor Statement

Senate Bill 312
Concert or Athletic Event Promoters

SB 312 is a simple consumer protection bill. The bill will assure that should a live public event be cancelled in the State of Alaska, ticket holders will always be guaranteed a refund for the purchase price of their ticket.

Under current Alaska Statutes a person who wishes to promote a concert must receive a promoter's certificate of registration issued by the Department of Commerce, Community, and Economic Development. In case of the concert cancellation, tickets are subject to refunds for a period of ten days after the scheduled date of the concert. Currently a promoter shall pay a fine or may be imprisoned for up to five years if after the tenth day following the scheduled event he fails to refund the purchase price of a ticket to a concert that has been cancelled.

Senate Bill 312 will change current Alaska Statutes by addressing all live public events, not just concerts. The bill will require a promoter to file a $5,000 cash deposit with the Department of Commerce, Community, and Economic Development or escrow account with a lending institution or escrow agent. Should the event be cancelled, a promoter will have to refund the purchase price within 30 days. Should a promoter fail to refund the purchase price within the 30-day period, the State, having the access to the escrow account, can provide the refund to unsatisfied ticket holders. A promoter who fails to meet the obligations will still be subject to fines or imprisonment for up to five years. Senate Bill 312 excludes 501(3)(c) non-profit corporations, groups or societies qualified for non-profit status only if they receive all of the proceeds from a covered event.

Please join me in support of this important consumer protection legislation.

Sponsor Statement

SB

315

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 4/12/06

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 315

SB 315 DISPOSITION OF UNREDEEMED PROPERTY

"An Act relating to the disposition of unredeemed property; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Betsy Davis			X	
Ralph Wilson	✓			
Ben Stevens	✓			
CHAIR: Gene Brewer	✓			

Amendment #1

Proposed amendment to SB 315:

Add to the end of Section 1:

"At the time of the loan, the pawnbroker shall also provide notice to the pledgor that the pawnbroker will retain the amounts allowed by this section if the property is sold."

For Senate Labor & Commerce Committee

465-3871

Fr: Ed Sniffen

SB 315, will restore the intent of the ratio established in 1981 between the paw limit and the proceeds received from the sale of unredeemed property.

Year	Pawn Limit	*Unredeemed Property "Give Back" to Pawne
1949	$100	No provision regarding unredeemed property
1981	$200	$400 (twice the loan limit)
1993	$500	No change from $400 due to legislative oversig
2006	$500	Change to $1000 (twice the loan limit)

Value of $400 in 1981 in 2006 dollars using the Consumer Price Index: $891.09

*Definition of unredeemed property: Pawns are collateralized loans whereby an individual borrows money against an item (TV, tool, piece of jewelry) and leaves the item with the pawnshop. The pawner has 60 days to make an interest payment or pay off their loan. Failure to do so, results in an unredeemed pawn which becomes the property of the pawnshop and can be sold.

Notes on proposed change in disposition of unredeemed property.

In 1981, HCSCSHB 421 passed the Alaska Legislature. It did 2 things.

a) Increased the pawn limit from $100 to $200, and

b) Added new language stating the pawnbroker shall pay the pawner 1/2 the amount in excess of $400 received for the unredeemed proper when it sold. The thinking was that if the pawnbroker sold an item for over twice the pawn limit it would be reasonable to return some of it to the person who originally pawned the item.

In 1993, the Alaska Legislature increased the pawn limit from $200 to $500. Due to an oversight, they didn't change the language regarding sale of unredeemed property from $400 to $1000, or twice the new pawn limit.

SB 315, simply corrects this oversight and restores the ratio established in 19

Chapter 08.76. PAWNBROKERS AND SECONDHAND DEALERS

Sec. 08.76.010. Transactions to be entered in book kept at place of business.

A person engaged in the business of buying and selling secondhand articles, or lending money on secondhand articles, except a bank, shall maintain a book, in permanent form, in which the person shall enter in legible English at the time of each loan, purchase, or sale

PAWN Limit
1955 - $100.00
1981 - $200.00
1993 - $500.00

(1) the date of the transaction;

(2) the name of the person conducting the transaction;

(3) the name, age and address of the customer;

(4) a description of the property bought or received in pledge, which includes for any firearm, watch, camera, or optical equipment bought or received in pledge, the name of the maker, the serial, model, or other number, and all letters and marks inscribed;

1949

(5) the price paid or amount loaned;

(6) the signature of the customer.

Sec. 08.76.020. Manner of recording entry.

The entries shall appear in chronological order, in ink or indelible pencil. Blank lines may not be left between entries. Obliterations, alterations, or erasures may not be made. Corrections shall be made by drawing a line in ink through the entry without destroying its legibility. The book shall be open to the inspection of a peace officer at reasonable times.

Sec. 08.76.030. Criminal liability.

A person who violates AS 08.76.010 or 08.76.020 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both.

Sec. 08.76.040. Disposition of unredeemed property.

1981 HCSCSB 421

(a) If property bought or received in pledge by a pawnbroker is not redeemed by the pledgor within the redemption period, the pawnbroker shall give notice to the pledgor by mail to the pledgor's last known address that the redemption period has expired. If the property is not redeemed within 30 days from the date of mailing of the notice, the title and interest of the pledgor in the property vest in the pawnbroker subject to (b) of this section.

(b) If a pawnbroker sells property bought or received in pledge and not redeemed within 30 days after the date of mailing notice under (a) of this section, the pawnbroker shall pay the pledgor one-half of the amount in excess of $400 received for the property.

(c) A pawnbroker shall give notice of any money due the pledgor under (b) of this section by certified mail within 10 days of the sale of the pledged property. If the pledgor does not respond within 90 days after the notice is mailed under this subsection, the pawnbroker is entitled to the entire amount

SENATOR
JOHN J. COWDERY

Anchorage

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

January – May:
State Capitol, Suite 101
Juneau, Alaska 99801 – 1182
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Toll Free: 888-269-3879
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716 W. 4th Avenue
Anchorage, Alaska 99501
Tel: 907-269-0222
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Senator_John_Cowdery@legis.state.ak.us

Sponsor Statement
SB 315
"An Act relating to the disposition of unredeemed property;
and providing for an effective date."

Pawns are collateralized loans whereby an individual borrows money against an item (TV, tool, piece of jewelry) and leaves the item with the pawnshop. The pawner (individual bringing item in) has 60 days to make an interest payment or pay off their loan. Failure to do so results in an unredeemed pawn item, which becomes the property of the pawnshop and can be sold.

How unredeemed property is currently handled can be best explained by this scenario: A pawnshop takes a piece of jewelry in for the maximum pawn loan limit of $500 – the pawner fails to make interest payments or pay off the loan by the 60 day mark. The pawnshop then sells the jewelry for $700. Currently, the pawnshop would owe the pawner 50% of the extra $300 profit from the $700 sale. ($700 sale less $400 unredeemed prop max) This is the part of the statute SB 315 will change.

Pawn loan limits have been regulated by statute since 1949. Since that time the issue has been revised twice, with the last time being 13 years ago in 1993. The sale of unredeemed property has been regulated by statute since 1981. Two different issues are raised with these statutes. The first is the pawn limit, which is the maximum amount that can be loaned on any single item. The second is the handling of unredeemed property.

In the following chart you will see that the pawn loan limit has been raised over the years, obviously with the value of a dollar and the consumer price index this change has been necessary. In 1993 when the pawn loan limit was raised, the unredeemed property provision remained the same, causing a disparity in the pawn loan limit to the unredeemed property amount.

YEAR	PAWN LOAN LIMIT	UNREDEEMED PROPERTY PROVISION
1949	$100	No Provision
1981	$200	$400 (twice the pawn loan limit)
1993	$500	$400 (no change from 1981 law)
2006	$500 – unchanged	$1000 (proposed change to twice the pawn loan limit)

SB 315 restores the ratio that was originally established between pawn loan limits and unredeemed property. It does not change the $500 pawn loan limit, but changes the language regarding the sale of unredeemed property from $400 to $1000, or twice the pawn loan limit, as was previously the standard set in 1981.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 315
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: Disposition of Unredeemed Property
RDU: Banking & Securities (536)
Component: Banking & Securities
Sponsor: Rules
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						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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 increases the amount a pawnbroker can keep for profits when selling property bought or received in pledge and not redeemed within 30 days after the date of mailing notice. It ties the allowable amount they can keep without sharing with the customers, to a section in the Alaska Small Loans Act which exempts pawnbrokers from the that act for loan up to $500. This legislation does not impact the operations of the division.

Prepared by: Mark Davis, Director — Phone 465-5447
Division: Banking & Securities — Date/Time 4/14/06 11:47 AM
Approved by: William C. Noll, Commissioner — Date 4/14/2006
Agency: Commerce, Community, and Economic Development

(Revised 9/7/2005 OMB)

The below references are applicable to SB 315:
Short title: Relating to unredeemed property

AS 08.76.040 Disposition of unredeemed property.

(a) If property bought or received in pledge by a pawnbroker is not redeemed by the pledgor within the redemption period, the pawnbroker shall give notice to the pledgor by mail to the pledgor's last known address that the redemption period has expired. If the property is not redeemed within 30 days from the date of mailing of the notice, the title and interest of the pledgor in the property vest in the pawnbroker subject to (b) of this section.

(b) is amended to read:

If a pawnbroker sells property bought or received in pledge and not redeemed within 30 days after the date of mailing notice under (a) of this section, the pawnbroker shall pay the pledgor one-half of the amount **that is** (IN EXCESS OF $400) received for the property **and that exceeds twice the maximum amount allowed under AS 06.20.330 for individual loans by pawnbrokers and loan shops to be exempt from AS 06.20**.

(c) A pawnbroker shall give notice of any money due the pledgor under (b) of this section by certified mail within 10 days of the sale of the pledged property. If the pledgor does not respond within 90 days after the notice is mailed under this subsection, the pawnbroker is entitled to the entire amount received by the pawnbroker for the property.

(d) In this section "redemption period" means the period agreed to in writing by the pledgor and pawnbroker for the holding of property by the pawnbroker without sale to a third party or, in the absence of a written agreement, 60 days.

AS 06.20.330. Exemptions

(a) [Repealed, Sec. 55 ch 75 SLA 2002].

(b) This chapter does not apply to individual loans by pawnbrokers or loan shops where separate and individual loans do not exceed $500.

AS 06.20. Alaska Small Loans Act

SJR

11

SENATE COMMITTEE REPORT
First Committee of Referral

)ATE: 3/3/05 FURTHER: Finance

)ate of 5-Day Notice: _____ DATE TURNED
in accordance with Uniform Rule 23) IN TO OFFICE: _____

abor and Commerce Committee considered SENATE JOINT RESOLUTION NO. 11

SJR 11 REPEAL TELECOMMUNICATIONS TAX

Irging the United States Congress to amend the tax code to repeal the federal excise tax on ommunications.

nd recommends:

] be **replaced** with _____ **CS** _____ (_____)

] adopt **previous** _____ **CS** _____ (_____)

] attached amendment(s)

] adopt Letter of Intent by _____ Committee

] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Bettye Davis			X	
John Eden			X	
Ralph Kilgin	✓			
Ben Stevens	✓			
CHAIR: C Brent	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SJR11
() Publish Date: 3/3/2005

Revision Date/Time (Note if correction):
Dept. Affected: Revenue 04
Title: Repeal Telecommunications Tax
RDU: Tax and Treasury
Component: Tax
Sponsor: Senator Therriault
Requester: (S) L&C
Component No.: 247ö

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 ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--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:

We could not find any data specifically on the federal excise tax revenue on telecommunications broken down by State. However, the economic census for 1997 lists total receipts from telecommunications revenue in Alaska at $766,441,000 and in the nation at $260,500,898,000. Although updated census information is available for the nation it is not yet available for telecommunications in Alaska. The ratio of Alaska telecommunications sales to national telecommunication sales is then .0029. The revenue collected nationally from this tax for federal fiscal year 2003 (October 1 - September 30) was $5 8 billion If we multiply the above ratio against the national tax revenue from the federal telecommunications tax ($5.8 billion x .0029) we obtain an estimate of about $17 million for the amount Alaskan taxpayers pay in federal telecommunication taxes.

Prepared by: Chuck Harlamert and Brett Fried — Phone: 465-2320
Division: Tax Division — Date/Time: 3/31/05 8:15 AM
Approved by: Tom Boutin, Deupty Commissioner — Date: 3/31/2005
Agency: Revenue

Alaska State Legislature

SENATOR
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Senate

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SENATE DISTRICT F

SJR 11

Sponsor Statement

This resolution encourages Congress to once again pass a provision to repeal the "tax on talking", formally known as the federal excise tax on communications. This tax was originally put into place in 1898 to help fund the Spanish American War under the guise of a temporary luxury tax.

Since that time, it has been repealed twice, reenacted in 1941, adjusted from 10% in 1965 downward to be phased out at 1% per year, reached a low of 1% in 1981 and then began to rise and climbed back to 3%. It has remained at that level since the Revenue Reconciliation Act of 1990. In 2000 Congress moved to repeal the tax once and for all; however President Bill Clinton vetoed the measure.

Currently more than 94 million households pay the 3% phone tax. It disproportionately hurts seniors and others on low or fixed incomes. It affects 96% of the households using the phone lines for Internet service. At a time when we are trying to increase commerce this is a harmful tax.

Email: Senator_Gene_Therriault@legis.state.ak.us

Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gene Therriault
Current Version: SJR 11
Contact: Dave Stancliff, 465-4797

Fact Sheet for: Senate Joint Resolution 11

Short Title: REPEAL TELECOMMUNICATIONS TAX

Summary:

- Urges the United State Congress to amend the tax code to repeal the federal excise tax on communications.

Benefits:

- Could encourage expansion of the telephone infrastructure, Internet and other new technologies.
- Urges repeal of a regressive federal excise tax that no longer serves its intended purpose.

Background:

- The federal excise tax on communications was enacted in 1898 for the purpose of funding the Spanish-American war as a "temporary" luxury tax. Telephone service is no longer a luxury, but a necessity. The federal excise tax is regressive, as low-income Americans pay a higher percentage of their income for telephone services than high-income Americans. The tax now flows into the general fund, rather than being earmarked for a specific purpose. The U.S. Congress passed a repeal of the federal excise tax on telecommunications in 2000, but it was vetoed by President Bill Clinton.

Fact Sheet Revision Date Thursday, March 03, 2005 12:08 PM

FREEDOMWORKS
CITIZENS FOR A SOUND ECONOMY & EMPOWER AMERICA

February 12, 2001

Iowa CSE Director Sounds Off in Effort to Repeal Federal Excise Tax

By: Jason Gross

Letters to the Editor
Repeal excise tax on telecommunications

02/10/2001

An excise tax on telecommunications instituted in 1898 to fund the Spanish-American War still penalizes consumers every time they pick up the telephone ("Grassley: Repeal Old Phone Tax," Feb. 2).
This month, U.S. Senator Charles Grassley proposed legislation to eliminate the federal excise tax. Grassley stands a good chance of succeeding where others have come up short. Last year, the House and the Senate passed a measure to eliminate the tax - on average more than $55 per household, but it suffered under the veto pen of President Clinton.

The tax is problematic for many reasons. First and foremost, it is a tax on communication - the basis of a free society and a healthy marketplace. In addition, it is regressive. This means that poor Americans feel its adverse effect more strongly. In today's communications marketplace, many high-speed services are difficult to categorize based on antiquated definitions. In fact, the tax that Grassley and his Democratic co-sponsor, U.S. Senator John Breaux, seek to eliminate applies to "telegraph, teletype and telephone" service.

The Spanish-American War lasted a few months. The tax created to fund the war effort remains after more than a century. It is time, once and for all, to relegate it to the history books.

-Jason W. Gross, director, Iowa Citizens for a Sound Economy, 3111 Ingersoll Ave., Des Moines.

[This letter was published by the Des Moines Register Online

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Presidential veto puts repeal of telephone tax on hold

By Kay Bell • Bankrate.com

Congress thought its battle to do away with a century-old telephone tax was over in mid-October. That's when legislation phasing out the fee went to the White House for a presidential signature.

But the effort to eliminate the 3 percent excise tax became an unexpected casualty of the escalating budget war on Capitol Hill.

The phone tax provision was part of the larger Treasury Department appropriations bill. The president said he had no problem with the bill itself and had even voiced his approval of the phone tax provision. But Clinton used his veto pen just before midnight Oct. 30 to send a message to Congress. He had wanted money for education programs in the bill, too. When it wasn't added, he axed the entire measure, leaving the phone tax intact.

Opponents of the tax, created in 1898 to help pay for the Spanish-American War, plan to rejoin the tax fight when Congress returns for a lame-duck session after the general election. Then they'll look to add the phone tax provision to a bill that's more acceptable to the White House.

The tenacity of the tax, however, is no surprise to those who know its history. Over the last century, the tax has been abolished and reinstated numerous times.

The Federal Telephone Excise Tax Timeline

1898	Temporary tax on telephone services adopted to help fund the Spanish-American War.
1914	Long distance "luxury" telephone tax is imposed at a rate of 1 cent per call to help pay for some of the costs of World War I.
1916	Tax is repealed.
1917	Tax is reinstated at a rate of 5 cents per call once the United States enters the war.
1918	Tax is expanded to cover additional telephone services.
1924	Telephone excise tax is repealed.
1932	Tax is reinstated at per-call rates ranging from 10 cents to 20 cents, depending on the call's cost.
1942	Tax rate is changed to a flat 20 percent rate.
1945	Tax rate is increased to 25 percent.
1954	Tax rate is reduced to 10 percent.
1959	Tax rate is slated to expire in 1960.
1960	Expiration schedule is delayed

Phased in phone relief

When -- or if -- this latest move to kill the phone tax succeeds, the charge will begin fading from telephone bills across the country.

Thirty days after the bill becomes law, the tax will drop to 2 percent. It would remain there through Sept. 30, 2001.

On Oct. 1, 2001, the rate would go to 1 percent and stay there through Sept. 30, 2002.

Full repeal of the tax would be on Oct. 1, 2002.

Monthly taxes for many phone options

The charge shows up on every phone bill that goes to the 99 million American telephone service subscribers, often designated as FET for federal excise tax.

And while 3 percent might not sound like much, consumer activists and communication industry representatives note that it can add up. The tax can be applied to myriad phone options each month: local subscriber line charges, specialty features like Call Waiting and Caller ID, local toll charges, long-

to 1964	annually.
1965	As part of the excise tax reform project, the 10 percent communications excise tax is scheduled to be phased out over three years.
1966	Phase-out delayed for one year.
1968	Phase-out restructured to conclude in 1973.
1969	Phase-out delayed for one year.
1970	Schedule replaced by a 10-year plan beginning in 1973.
1973	Phase-out begins.
1981	Excise tax down to 1 percent but elimination is deferred. 1 percent is extended through 1984.
1982	Tax rate is increased to 3 percent with elimination in 1985.
1984	3 percent rate is extended through 1987.
1987	3 percent rate is extended through 1990.
1990	3 percent excise tax made permanent in 1990

Source: Repeal the Tax on Talking Coalition

distance calls, wireless service and directory assistance.

The phone tax money has been a windfall to the U.S. Treasury because it is not designated for specific government programs like other excise taxes, such as gas taxes that are funneled to the federal highway trust fund.

But it's the telephone tax's contribution to the current budget surplus that allowed Democrats and Republicans to agree on ending the charge.

Tax repeal linked to tax-free Internet efforts

One of the legislation's original sponsors also hailed elimination of the phone tax as critical to the continued growth of communications technology.

"Today, this tax is paid by everyone who uses a telephone, makes a call on a cell phone or uses a phone line to access the Internet," said Rep. Rob Portman (R-Ohio). And with the rapid pace of technological change, he noted, the differences between traditional telecommunications, the Internet and other technologies is increasingly blurred.

"For example, 96 percent of households with Internet access use telephone lines to go online," Portman said. "If the federal phone tax remains on the books, it would jeopardize recent efforts to keep the Internet tax-free."

Nothing lasts -- or disappears -- forever

A word of historical warning, however. Over the last century, the tax has been abolished and reinstated numerous times.

It started out in 1898 as a penny addition to long-distance calls of 15 cents or more and was supposed to be only temporary. But it has never disappeared for long, and at one point climbed to 25 percent. Federal lawmakers designated the tax as "permanent" in 1990 when they set its current 3 percent rate.

So consumers would be well advised to take full advantage of this latest phone tax repeal, if it makes it into law. You just never know when Congress might decide a "temporary" excise tax on calls is necessary again.

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questions
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"With that I turn to the next order of today's business: markup of H.R. 3916, a bill to repeal the federal communications excise tax. This "tax on talking" is outdated, unfair, and complex for both consumers to understand and for the collectors to administer. It cannot be justified on any tax policy grounds.

"The telephone tax was first imposed in 1898 as a temporary measure to fund the Spanish-American War. That war lasted about 8 months. Yet here we are -- 102 years later -- and we are still dealing with this tax.

"Needless to say, a lot has changed since then. The original tax was designed to be a luxury tax -- as there were a little more than half a million phone lines existing in the country. Now, virtually every American family has at least one telephone line, and it estimated that there are 252 total million phone lines in the country. The federal phone tax applies to local phone service, to long distance service, to home phones, to cellular phones, and to phones used for Internet connections. And since it applies at the same rate to everyone, this tax is one of the most regressive taxes on the books.

"Families with incomes of under $20,000 earn less than 9% of the total income in the U.S.; yet, they shoulder almost one-quarter of the total communications tax burden. Families with incomes under $50,000 pay about 60% of the total communications tax. All-in-all, this tax costs the American public more than $5 billion per year. This immediate repeal is overdue, it's fair, and because it's within the tax cut allocation given to us in the budget, it's fiscally responsible as well.

"I want to emphasize that unlike some other excise taxes, the money raised by this tax does not go into a specific trust fund. Also, this tax is different from most other excise taxes in that it is imposed directly on consumers. If consumers wade through their phone bill -- and I know that is not as easy as it sounds -- they should be able to find a separate line listing a 3% federal excise tax. With the immediate repeal of this tax, that charge should simply disappear. 93 million households and 23 million business service companies will see their overall phone bills go down by 3%.

"Members of the Committee, it is time to end the federal phone tax. For too long, while America is listening to a dial tone, Washington has been hearing a dollar tone. Let us hang up the phone tax once and for all."

DESCRIPTION OF H.R. 3916

(REPEAL OF THE FEDERAL COMMUNICATIONS EXCISE TAX)

Scheduled for Markup

By the

HOUSE COMMITTEE ON WAYS AND MEANS

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

May 15, 2000

JCX 47-00

CONTENTS

I. INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the present Federal communications excise tax, an overview of the history of the tax, and a description of H.R. 3916, a bill to repeal the tax. H.R. 3916 has been scheduled for markup by the Committee on Ways and Means on May 17, 2000.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3916 (Repeal of the Federal Communications Excise Tax)*, (JCX-47-00), May 15, 2000.

II. DESCRIPTON OF H.R. 3916

A. Present Law

In general

A three percent Federal excise tax is imposed on amounts paid for communications services (Code sec. 4251).[2] Communications services are defined as "local telephone service," "toll telephone service," and "teletypewriter exchange service."[3] The person paying for the service (i.e., the consumer) is liable for payment of the tax. Service providers are required to collect the tax; however, if a consumer refuses to pay, the service provider is not liable for the tax and is not subject to penalty for failure to collect if reasonable efforts to collect have been made. Instead, the service provider must report the delinquent consumer's name and address to the Treasury Department, which then must attempt to collect the tax.

Local telephone service is defined as the provision of voice quality telephone access to a local telephone system that provides access to substantially all persons having telephone stations constituting a part of the local system. Toll telephone service is defined as voice quality communication for which (1) there is a toll charge that varies with the distance and elapsed transmission time of each individual call and payment for which occurs in the United States, or (2) a service (such as a "watts" service) which, for a flat periodic charge, entitles the subscriber to an unlimited number of telephone calls to or from an area outside the subscriber's local system area.

Special rules, enacted in 1997, apply to the sale of "prepaid telephone cards." These cards are subject to tax when they are sold by a telecommunications carrier to a non-carrier (rather than when communication services are provided to the consumer). The base to which the tax is applied is the face amount of the card.

Exemptions

Present law provides for the following exemptions:

- Public coin-operated service from the tax on local telephone service, and to the extent that the charge is less than 25 cents, from the toll telephone service tax.[4]

- Service for the collection of news by the public press, news ticker, or radio broadcasting services (providing a news service as part of or similar to that of the

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[2] The tax base does not include State or local taxes on the same service provided that the amount of the State or local tax is separately stated on the customer's bill.

[3] Teletypewriter exchange service refers to a data system that is understood to be no longer in use.

[4] If coin-operated toll service is taxable, the tax is computed to the nearest multiple of five cents.

public press), from the toll telephone service tax. (Local telephone service provided to the press is subject to tax.)

- Private communication service for which a separate charge is made, from the local telephone service tax.[5]

- Service provided to international organizations and the American Red Cross.

- Toll telephone service provided to members of the Armed Services who are stationed in combat zones.

- Certain toll telephone service to common carriers, telephone or telegraph companies, or radio broadcasting stations or networks in the conduct of these businesses.

- Installation charges (including wires, poles, switchboards, or other equipment).

- Telephone service provided to non-profit hospitals.

- Telephone service provided to State and local governments.

- Telephone service provided to nonprofit educational organizations.

B. Overview of History of the Communications Tax[6]

The first tax on telephone service was enacted in 1898 to help finance the Spanish-American War. That tax was repealed in 1902 and was not re-enacted until World War I required additional revenues. The World War I telephone tax was repealed in 1924 and was re-enacted in 1932. All of these initial telephone taxes applied only to toll (long distance) service. In 1941, with the advent of World War II, the tax was extended to general local service.

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[5] Private communication service is defined as (1) service that entitles the customer to exclusive or priority use of a communication channel or group of channels, or an intercommunication system for the customer's stations; (2) switching capacity, extension lines and stations, or other associated services provided in connection with services described in (1); and (3) channel mileage connecting a telephone outside a local service area with a central office in the local area.

Unlike the other exemptions, the special treatment for private communication service is accomplished by means of an exclusion from the definition of local telephone service rather than as a stated exemption.

[6] For a more complete discussion of the history of the communications excise tax, see Congressional Research Service (Louis Alan Talley), *The Federal Excise Tax on Telephone Service, A History*, May 9, 2000 (RL30553).

An excise tax on telephone service has been in effect in every year since 1941, despite enactment of periodic legislation to repeal or phase-out the tax. In the Excise Tax Reduction Act of 1965, Congress scheduled a phase-out, beginning with a reduction in the then 10-percent rate[7] for both local and toll service to three percent after 1965. Additional reductions of one percentage point per year were scheduled thereafter until there would have been no tax effective on January 1, 1969. However, the scheduled reductions were repealed in 1966 (effective April 1, 1966), and the 10-percent rate was re-instated. A delayed phase-out schedule was enacted in 1968, to begin in 1970. This phase-out schedule also was postponed, with a one-percentage point per year phase-out finally going into effect on January 1, 1973.

In 1973, the tax rate declined from 10 percent to 9 percent as the first step in this phase-out, which was to be completed beginning in 1982. However, the Omnibus Reconciliation Act of 1980 delayed the repeal by one year (until 1983); and the Economic Recovery Tax Act of 1981 further delayed repeal for two additional years. After reaching a rate of one percent, the rate was increased again to three percent in 1983, and after being extended at that rate several times, the three percent rate was made permanent by the Revenue Reconciliation Act of 1990.

C. Explanation of the Bill

H.R. 3916 would repeal the three-percent Federal communications excise tax, effective for amounts paid pursuant to bills first rendered more than 90 days after the date of enactment.

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[7] At their highest, the tax rates were 15 percent on general local service and 25 percent on toll service costing more than 24 cents per message. These rates were in effect from 1944 until 1954.

SJR

15

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/9/05

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE JOINT RESOLUTION NO. 15

SJR 15 BAN LAWSUITS AGAINST FIREARMS INDUSTRY

Requesting the United States Congress to end the abuse of tort laws against the firearms industry.

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Betty D Davis			X	
Ralph Voelker	✓			
Ben Steeves	X			
CHAIR:	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SJR 15
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Legislature
Title "Requesting the United States Congress to end the abuse of tort laws against the firearms industry."
BRU Legislative Council
Component: Council and Subcommittees
Session Expenses
Sponsor Senators Huggins, Therriault
Requestor Senate Labor and Commerce
Component No. 783

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director
Phone 465-6626
Division Administrative Services
Date/Time 4/18/05 1:13 PM
Approved by: Pamela Varni, Executive Director
Date 4/18/2005
Agency Legislative Affairs Agency

(Revised 9/2001 OMB)

Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Charlie Huggins
Current Version: SJR 15
Contact: Ryan Moore, 465-3878

Fact Sheet for: Senate Joint Resolution 15

Short Title: BAN LAWSUITS AGAINST FIREARMS INDUSTRY

Summary:

- Urges the United States Congress to pass legislation protecting firearms manufacturers from lawsuits involving the misuse of firearms by third parties.

Benefits:

- Voices Alaska's opposition to abusive lawsuits against the firearms industry.
- Protects the firearms industry from lawsuits involving firearms that operated as designed and intended.
- Reinforces a citizen's right under the Second Amendment of the United States Constitution to keep and bear arms.

Background:

- Individuals who use firearms for criminal purposes or in a negligent manner should not be able to file lawsuits against a firearms manufacturer when the firearm operated as designed and intended. SJR 15 seeks to protect the firearms industry from abusive lawsuits and protect an individual's right to own and bear firearms by asking the United States Congress to outlaw these types of lawsuits. Thirty three states have similar laws.

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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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Bill 1 of 12

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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 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.

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 injunctiv[illegible] by others.

Current House Resolution in U.S. Congress

Mr. STEARNS (for himself, Mr. BOI[illegible] T of Maryland, Mr. BASS, Mr. ROGERS of Michigan, Mr. BLUNT, Mr. WILSOI[illegible] CUBIN, Mr. BRADY of Texas, Mr. BOEHLERT, Mr. NUSSLE, Mr. TEI[illegible] f New Hampshire, Mr. SIMPSON, Mr. BOEHNER, Mrs. BLACKBURN, Mr[illegible], Mr. BOYD, Mrs. MUSGRAVE, Mr. GARRETT of New Jersey, Mr. MAN[illegible]ARSHALL, Mr. BONILLA, Mr. CANTOR, Mr. BACA, Mr. TANNER, Mr. LEWIS of[illegible]ARSEN of Washington, Mr. HOLDEN, Mr. BERRY, Mr. TAYLOR of North Carc[illegible]Mr. GARY G. MILLER of California, Mrs. MILLER of Michigan, Mr. SWEENE[illegible]HOCOLA, Mr. THOMAS, Mr. PETERSON of Minnesota, Mr. CULLMOR, Mr. SULI[illegible] ROGERS of Kentucky, Mr. CULBERSON, Mr. OTTER, Mr. WALDEN of Orego[illegible]IBBONS, Mr. BURGESS, Mr. WESTMORELAND, Mr. CARTER, M[illegible]I, Mr. BONNER, Mr. KANJORSKI, Mr. SHUSTER, Mr. GENE GREEN of Te[illegible]ama, Mr. GORDON, Mrs. CAPITO, Mr. EVERETT, Mr. YOUNG of Alaska, M[illegible]AN of Kansas, Mr. BARRETT of South Carolina, Mr. RYUN of Kansas, Mr. M[illegible], Mr. COOPER, Mr. CALVERT, Mr. HAYWORTH, Mr. FRANKS of Arizo[illegible]ALL, Mr. SIMMONS, Mr. MILLER of Florida, Mr. THORNBERRY, Mr. POMBO, M[illegible]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 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 HREF="http://www.FreeRepublic.com/perl/redirect?u=http%3A%2F%2Fnraila.org%2Fresearch%2F19990825-LawsuitPreemption-001.shtml">"Ju nk Lawsuits" Against Gun Makers.

Having difficulty finding ILA-related info? Try our FAQ Sheet

NRAILA org is maintained for the NRA by
Mainstream Electronic 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 Foerster 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 and 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)*
[Reply | Top | Last]

To: **Bob Evans**

Hurray for us! P*ss on HCL, klintoonites, and the rest of the socialists. Great post Bob!

2 Posted on **10/07/1999 14:07:04 PDT** by **rbosque**
[Reply | To 1 | Top | Last]

To: **Bob Evans**

Hooray! The threat of sanity rears its terrible head

3 Posted on **10/07/1999 14:14:42 PDT** by **RLK**
[Reply | To 1 | Top | Last]

To: **rbosque**

Thank you, there will be more... you can count on it!

4 Posted on **10/07/1999 14:24:34 PDT** by **Bob Evans** *(bob0159@pacbell.net)*
[Reply | To 2 | Top | Last]

To: **RLK**

I saw this. Is this a sign that the anti-gun crowd has lost its momentum? Is the tide turning? Are our rights finally safe? I don't mean to overstate the case or anything.

5 Posted on **10/07/1999 14:25:21 PDT** by **IronJack**

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 fails 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.

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CNSNEWS.COM™
Cybercast News Service

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 the 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.

Listen to audio for this story.

E-mail a news tip to Jeff Johnson.

Send a Letter to the Editor about this article.

ALASKA STATE LEGISLATURE

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Senator_Charlie_Huggins@legis.state.ak.us

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Charlie Huggins
Senator

24-LS0757\G

SPONSOR STATEMENT

Senate Joint Resolution 15

End Tort Law Abuse Against the Firearm Industry

Senate Joint Resolution 15 addresses the abuse of our nation's courts through predatory lawsuits against the U.S. firearms industry – suits attempting to force law-abiding businesses to pay for criminal acts by individuals beyond their control. Alaska is one of thirty-three other states that have passed legislation protecting firearms and ammunition manufacturers, and this resolution will advocate for the current legislation in the United States Congress supporting this measure (**S.397**).

Lawsuits against the firearm industry are based on gun controller activist vendetta against the gun owners of this country. Even though these cases are often unsuccessful, the cost of the lawsuits threatens an important industry in America. In addition, the lawsuits do nothing to curb criminal gun violence. This resolution requests the United States Congress to stop abusive, politically driven litigation against law-abiding individuals for the misbehavior of criminals over whom they have no control.

I encourage the Legislature to champion **SJR15**. Thank you.

Contact: Ryan Moore
907-465-3878

Sponsor Statement

HB

15

SENATE COMMITTEE REPORT

DATE: 2/23/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE:_____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 15(L&C) am

HB 15 LIQUOR LICENSES: OUTDOOR REC. LODGE/BARS

"An Act relating to outdoor recreation lodge alcoholic beverage licenses; relating to transfer of certain beverage dispensary licenses issued before June 6, 1985; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	✓			
	✓			
CHAIR:	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 15(L&C)
(H) Publish Date: 2/2/05

Revision Date/Time (Note if correction):
Dept. Affected: Fish and Game

Title: Seasonal Hunt/Fish Lodge Liquor License
RDU
Component

Sponsor: Representative Meyer

Requester: House Labor & Commerce 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)*

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson
Phone 465-6137
Division: Legislative Liaison
Date/Time 1/24/05 12:21 PM

Approved by: Acting Commissioner Wayne Regelin
Date 1/24/2005
Agency: Alaska Department of Fish & Game

(Revised 12/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 15(L&C)
(H) Publish Date: 2/2/05

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety

Title: An Act relating to seasonal alcoholic beverage licenses
RDU: Alcoholic Beverage Control Board
Component: ABC Board

Sponsor: Representative Meyer
Requester: H. Labor and Commerce
Component No.: 2690

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 ( )	18.8	12.5	25.0	18.8	25.0	18.8

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	18.8	12.5	25.0	18.8	25.0	18.8
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	18.8	12.5	25.0	18.8	25.0	18.8

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)*

The state will issue new licenses to lodges, so the fiscal impact of this legislation should be positive. The difficult question will be determining how many licenses will be issued. While there will be some additional cost to the Alcohol Beverage Control (ABC) Board (staff time, postage, criminal background checks, long distance telephone, printing of signs), these additional costs can be absorbed assuming the Legislature approves increments in the fiscal year (FY) 06 budget.

For purposes of this fiscal note, I have conservatively estimated 15 new licenses issued in FY 06 and 10 new licenses in FY 07. When the 15 FY 06 licenses renew in FY 08 we will add another 5 licenses and additional 5 licenses will be added in FY 09 plus renewals.

Prepared by: Douglas B. Griffin, Director
Phone 269-0350
Division: Alcoholic Beverage Control Board
Date/Time 1/24/05 11:43 AM
Approved by: Commissioner William Tandeske
Date 1/24/2005
Agency: Department of Public Safety

State of Alaska
Department of Public Safety
Alcoholic Beverage Control Board

Frank H. Murkowski, Governor
William Tandeske, Commissioner

February 10, 2005

Representative Kevin Meyer
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

RE: CSHB 15(L&C)—Outdoor Recreation Lodge Alcohol Beverage Licenses

Dear Representative Meyer:

At the request of your staff, I am writing in support of CSHB 15 (L&C). This bill was crafted in the House Labor and Commerce Committee through the efforts of your staff in consultation with Alcoholic Beverage Control Board staff and others. The bill addresses the need for a limited license for outdoor recreation lodges to serve guests who pay handsomely to fish, hunt, and recreate in our great state. This bill brings lodges under the oversight of the ABC Board and the application and controls of the state's liquor laws.

The House Labor and Commerce Committee made changes to clarify and improve the bill. These changes made the lodge liquor licenses non-transferable, reduced the license fee to reflect the limited alcohol sales to registered overnight guests or off-duty staff only, defined "outdoor recreation lodge" in a reasonable manner, and exempted these limited licenses from population quotas. The ABC Board played a role in suggesting these changes and, therefore, supports them.

Representative Rokeberg offered an amendment on a separate alcohol regulation issue and it was incorporated into the bill as Sec. 3. The amendment addresses a very unique problem regarding a beverage dispensary license that was granted under a law that was subsequently modified to eliminate this type of license. The former law limited the ability to transfer the license to another person. The amendment makes the license transferable. In my opinion, this change does not harm the public in any way and represents an appropriate policy choice by the Legislature

If you have any questions regarding this analysis and statement of support, please contact me.

Sincerely,

Douglas B. Griffin
Director

cc: ABC Board Members
Commissioner William Tandeske, Department of Public Safety
Deputy Commissioner Ted Bachman, Department of Public Safety
Cliff Stone, Special Assistant, Department of Public Safety

Alcoholic Beverage Control Board
5848 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0350 - Fax (907) 272-9412

BROWN JUG, INC.
P.O. Box 190027
Anchorage, Alaska 99519-0027
Phone: (907) 563-3815, Ext. 249 / Fax: (907) 562-3130

February 14, 2005

Rep Kevin Meyers
State Capitol, Room 516
Juneau, AK 99801-1182

Dear Representative Meyers,

I am writing in support of HB 15. We are convinced that this bill will provide an easy and legal way for lodges around the state to provide a service to their clients.

The advantage to the lodges is that they can buy their product from distributors and/or package stores and have the goods shipped directly to them. The advantage to the public is that the lodges will be required to TIPS or TAMS train their people, and will be subject to ABC review bi-annually. The bill has protected both communities and other license holders with the provisions that restrict sales to guests and staff and that make the license non-transferable. This is a well thought out bill, which deserves a favorable vote of the legislature.

Yours truly,
BROWN JUG, INC

Robert Klein
Operations Manager

Amendments made to CSHB 15 L&C on the House Floor

Amendment	Discussion
Amendment 1 (insert): To page 1 line 10 following "of the lodge..." "...for consumption on the licensed premises or in conjunction with outdoor recreation activities provided by the licensee."	The primary concern expressed in floor debate was the potential impact the issuance of the outdoor recreation lodge license would have on rural Alaska and in particular on dry communities. Clarifying that the license was for **consumption** and delineating the boundaries of the licensed premises or authorized activities addressed the concerns members had with the license.
Amendment 2 (insert): To page 2 line 31 following "AS 04.11.400(j)" "...if the transfer does not involve a change in location."	A transferable license carries value on the secondary market for liquor licenses. Since only one license remains from the group issued under the former AS 04.11.400(j), members expressed concern that making the license transferable would convey an inappropriate property right to the owner of the license. Licenses issued under the new version of the old "public convenience" licenses are transferable as long as the transfer does not involve a change in location. Amendment 2 puts a similar limitation on the license addressed in section 3 of CSHB 15 (L&C).

Prepared by Representative Meyer's Office

Amendments/Changes to HB 15

Changes to HB 15 incorporated in CS HB 15 (L&C)

HB 15 – Original Version

- Seasonal Hunting & Fishing Lodge

Defined as: "a resort facility that provides lodging, food, and outdoor hunting or fishing guiding services to its registered overnight guests and that is not directly accessible by automobile."

- Service/Sale to registered overnight guests only.
- Lodge limited to those "not accessible by automobile."
- Seasonal License – six months per calendar year.
- License issuance limited by population in AS 04.11.400

CS HB 15 – L&C

- Outdoor Recreation Lodge

Defined as: "a business that provides overnight accommodations and meals, is primarily involved in offering opportunities for persons to engage in outdoor recreation activities and has a minimum of two guest rooms."

- Service/Sale expanded to "off-duty staff."
- Reference to "not directly accessible by automobile" removed.
- Year round license.
- Addition of exemption to population limitations on licenses in AS 04.11.400 (d) by adding a new subsection (m). An outdoor recreation lodge license may be issued but not transferred.
- New Section (3) authorizing the transfer of licenses issued under the former AS 04.11.400(J)

Prepared by Representative Meyer's Office

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: **February 22, 2005**

TO: **Representative Kevin Meyer**

FROM: **Mike Pawlowski**

RE: **Sectional Analysis for CSHB 15 (L&C)**
(Version No. 24 – LS0075\S.A)

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. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Makes a conforming amendment to section 2.

Section 2. Amends AS 04.11 by adding a new section that creates a liquor license for outdoor recreation lodges and makes appropriate definitions and specifies that the license may not be transferred.

Section 3. Exempts licenses issued under 04.11.100(j) before June 6, 1985 from AS 04.11.360, allowing them to be transferred.

Section 4. Creates an exception to the population limitations on the issuance of liquor licenses in AS 04.11.400 for outdoor recreation lodge licenses.

Section 5. Makes a conforming amendment to section 4.

Section 6. Creates an immediate effective date.

Email: R
Session: State C
Interim: 716 W. 4th

5-4945
07) 465-3476
:: (907) 269-0197

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS House Bill 15 (L&C)

"An Act relating to outdoor recreation lodge alcoholic beverage licenses; relating to transfer of certain beverage dispensary licenses issued before June 6, 1985; and providing for an effective date."

Alaska's alcoholic beverage laws require licenses for everything from golf courses (AS 04.11.115) to special events (AS 04.11.240). While lodges are an integral part of Alaska's economy and they provide important recreational opportunities for residents and non-residents, the state has never developed an appropriate alcoholic beverage license for lodges.

Today, a lodge owner that wishes to sell alcoholic beverages to their guests must obtain both a beverage dispensary license and a package store license. The issuance of alcoholic beverage licenses is limited in Alaska based on population, and lodge owners that want to be licensed may not even be able to get one.

CS for HB 15 (L&C) creates an alcoholic beverage license for lodges whose primary business is to provide opportunities for outdoor recreation. The biennial license will cost $1,250 and will only allow a lodge to serve alcoholic beverages to their overnight guests and off-duty staff.

With a license, lodges may sell and serve alcoholic beverages to their guests legally, purchase alcoholic beverages from wholesalers and develop an additional revenue stream for their businesses.

CSHB 15 (L&C) also allows licenses that were granted prior to June 6, 1985, under the public convenience exception to Alaska's population limits on alcoholic beverage licenses, to be transferred.

Last Updated 2/8/05

Email: Repres
Session: State Capito
Interim: 716 W. 4th Ave.

: (866) 465-4945
945 Fax: (907) 465-3476
0199 Fax: (907) 269-0197

HB

31

SENATE COMMITTEE REPORT

ATE: 3/31/06

FURTHER: Finance

DATE TURNED IN TO OFFICE:_____

abor & Commerce Committee considered CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 31(FIN)

HB 31 WORKERS' COMP: DISEASE PRESUMPTION

An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

nd recommends:

] be **replaced** with _____ **CS** _____ (_____)

] adopt **previous** _____ **CS** _____ (_____)

] attached amendment(s)

] adopt Letter of Intent by _____ _____ Committee

] further referral to _____ _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Bettye Davis	X			
[illegible]	X			
Ben Stevens			/	
CHAIR: [illegible]			/	

THE GEORGE WASHINGTON UNIVERSITY MEDICAL CENTER
WASHINGTON DC

DEPARTMENT OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH
SCHOOL OF PUBLIC HEALTH AND HEALTH SERVICES

1 May 2006

Kevin Smith
Executive Director
Alaska Municipal League Joint Insurance Association
907-258-2625

Dear Mr. Smith:

Re: HB31

You have asked my opinion regarding Alaska HB31, the bill now pending to establish a presumption on diseases for public safety personnel. This bill has problems.

Firefighters have been demonstrated in reasonable studies (not that there is not dispute) to have an elevated risk of the cancers listed, except melanoma. Police and EMS personnel have not.

The evidence that firefighters are at risk for serious chronic lung disease solely on the basis of firefighting is weak and should logically be an adjudication rather than a presumption.

Melanoma is almost exclusively a risk of being out of doors and exposed to natural sunlight. An occupational risk implies work out of doors for prolonged periods, with extensive skin exposure. Firefighters wear heavy protective gear and are not so exposed. EMS personnel spend much of their time inside vehicles or at station. Police are outside for prolonged periods but in Alaska, the risk of locally-acquired melanoma is relatively low because of the high latitude (ultraviolet radiation comes in at an angle) and short summer. The single greatest risk factor appears to be sunburn in early life, in childhood or teenage years, not necessarily cumulative dose of sun exposure. Although northern climes can have elevated melanoma rates (Alberta being an example), this is thought to be attributable mostly to exposure in other settings (e.g. in the case of Alberta while on vacation). Thus, a case of melanoma is very unlikely to be occupational.

Infectious exposures do occur in EMS work and occasionally police work and in ffs in combined departments. However, the risk is low compared to lifestyle issues (as demonstrated in reviews of studies of hepatitis) and so logically this should be rebuttable. The problem with making it rebuttable is that it gets the system deeply and intrusively into lifestyle issues.

2100 M STREET, NW • SUITE 203 • WASHINGTON, DC 20052 • 202-994-1734 • FAX 202-994-0011

The provision limiting recognition of these disorders to 5 y makes little sense for either the infections or the cancers: the infections that may result from exposure on the last day will manifest long before and the cancers that may result from exposure on the first day may take many more than 15 y (10 working history + 5 y since left job) to develop.

I hope these observations are helpful.

Sincerely,

Tee L. Guidotti, MD, MPH, Professor
Chair, Dept. of Environmental and Occupational Health
Director, Division of Occupational Medicine and Toxicology (Dept. of Medicine)

Page 3, Line 13 CONCEPTUAL

REPLACE WITH

"(1) for purposes of (b)(1)-(3) and (c)(1)-(5) of this section. .."

Note: The intent of this amendment is to stipulate that the pre-employment medical screening found in (b)(3)(A) screen for all the illnesses and infectious diseases included throughout the bill.

CONCEPTUAL

Create and insert new language that the presumption for the infectious diseases on page 3 is rebuttable by documented work exposure (or lack thereof) and consideration of behavioral, lifestyle, or preexisting medical conditions that may have caused exposure outside of work.

If you have questions regarding this request, please contact me directly at extension 5031.

Thank you.

From: Heath E. Hilyard, Staff to Rep. Anderson

Re: Amendments for HB 31

Please prepare a blank CS for CSSSHB31(FIN) to include the following amendments:

AMENDMENTS

Page 2, Line 17 –

REPLACE: "(1)(C)" with "(1)(A)-(C)"

Page 2, Line 28 –

DELETE: "Peace Officers"

Page 3, Line 11 CONCEPTUAL

INSERT

"(e) The provisions of (c)(1) – (5) apply to fire fighters covered under AS 23.30.243, peace officers and emergency medical rescue personnel;"

Appropriately renumber the remaining sections

Note: *The intent of this amendment and the one immediately above is remove peace officers from the presumption for the diseases/medical conditions outlined on page 2, but allowing peace officers to remain under the presumption for the infectious diseases listed on page 3*

24-LS0225\S
Bailey
5/4/06

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 31( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ANDERSON, Lynn, Gatto, Croft, Stoltze, Hawker, Kapsner, Elkins, Ramras, Crawford, Gara, Neuman, Berkowitz, LeDoux, McGuire, Meyer, Gardner, Kerttula, Guttenberg, Rokeberg, Cissna

A BILL

FOR AN ACT ENTITLED

"An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

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

*** Section 1.** AS 23.30 is amended by adding a new section to read:

Sec. 23.30.121. Presumption of coverage for disability from diseases for certain occupations. (a) There is a presumption that a claim for compensation for disability as a result of the diseases described in (b) and (c) of this section for the occupations listed under (b) and (c) of this section are within the provisions of this chapter. This presumption of coverage may be rebutted by a preponderance of the evidence. The evidence may include the use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(b) For a fire fighter covered under AS 23.30.243,

(1) there is a presumption that a claim for compensation for disability

as a result of the following diseases is within the provisions of this chapter:

(A) respiratory disease;

(B) cardiovascular events that are experienced within 72 hours after exposure to smoke, fumes, or toxic substances; and

(C) the following cancers:

(i) primary brain cancer;

(ii) malignant melanoma;

(iii) leukemia;

(iv) non-Hodgkin's lymphoma;

(v) bladder cancer;

(vi) ureter cancer; and

(vii) kidney cancer;

(2) notwithstanding AS 23.30.100(a), following termination of service, the presumption established in (1) of this subsection extend to the fire fighter for a period of three calendar months for each year of requisite service but may not extend more than 60 calendar months following the last date of employment;

(3) the presumption established in (1) of this subsection applies only to an active or former fire fighter who has a disease described in (1) of this subsection that develops or manifests itself after the fire fighter has served at least 10 years and who

(A) was given a qualifying medical examination upon becoming a fire fighter or during employment as a fire fighter that did not show evidence of the disease; and

(B) with regard to diseases described in (1)(C) of this section, demonstrates that the fire fighter was, while in the course of employment as a fire fighter, exposed to a known carcinogen, as defined by the International Agency for Research on Cancer or the National Toxicology Program, and the carcinogen is associated with a disabling cancer.

(c) The presumption in this subsection applies to fire fighters covered under AS 23.30.243, peace officers, and emergency medical and rescue personnel. In this subsection, "emergency medical and rescue personnel" means a trauma technician,

emergency medical technician, rescuer, or mobile intensive care paramedic who is a paid employee of a first responder service, a rescue service, an ambulance service, or a fire department that provides emergency medical or rescue services as part of its duties;

(1) under this subsection, there is a presumption that a claim for compensation for disability as a result of the following contagious diseases is within the provisions of this chapter:

(A) human immunodeficiency virus;

(B) acquired immunodeficiency syndrome;

(C) all strains of hepatitis;

(D) meningococcal meningitis; and

(E) mycobacterium tuberculosis;

(2) the presumption established in (1) of this subsection applies only to fire fighters covered under AS 23.30.243, peace officers, and emergency medical and rescue personnel who were given a qualifying medical examination upon becoming a fire fighter, peace officer, or emergency medical or rescue personnel who did not show evidence of the disease.

(d) The provisions of (b)(1)(A) and (B) of this section do not apply to a fire fighter who develops a cardiovascular or lung condition and who has a history of tobacco product use as established under (e)(2) of this section.

(e) The department shall, by regulation, define

(1) for purposes of (b)(1) - (3) and (c)(1) - (2) of this section, the type and extent of the medical examination that is needed to eliminate evidence of the disease in an active or former fire fighter; and

(2) for purposes of (d) of this section, the nature and quantity of a person's tobacco product use; the standards adopted under this paragraph shall use or be based on existing medical research.

(f) In this section, "fire fighter" has the meaning given in AS 09.65.295.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The presumption of coverage established by this Act applies to

claims made on or after the effective date of this Act, even if the exposure leading to the occupational disease occurred before the effective date of this Act.

Constance Hartle

From: Kevin Smith [kevins@amljia.org]
Sent: Wednesday, May 03, 2006 10:49 AM
To: Sen. Ben Stevens; Sen. Con Bunde; Sen. Ralph Seekins
Cc: jane_alberts%@legis.state.ak.us; Brian Hove
Subject: HB 31 - Pension and Other Questions

Dear Sen. Bunde and Commitee Members:

I want to thank the Senate Labor and Commerce Committee for allowing me to testify again on HB31. I will be unavailable for further testimony on Thursday as I will be Outside taking care of business.

As my testimony and letter should make quite clear, no amount of tinkering with this bill makes it any more palatable for Alaska's local governments. The fact remains that legitimate work-related injuries and illnesses are covered by workers' compensation and non work-related illnesses are generally covered by the employer's health plan.

As it stands today, if a fire fighter comes down with AIDS or brain cancer, the onus would be on the employer to prove by the preponderance of the evidence (50% plus 1) that it is not work-related. This is generally only accomplished with a medical opinion. Then, the burden of proof shifts to the employee to demonstrate that the illness is work-related.

As an example of this mechanism, I attach a recent Workers' Compensation Board decision. Please read the findings of fact and conclusions at law starting on page 12 to understand the presumption that applies in the law today. As you can see the employer in this case was only able to avoid the kidney cancer claim through expert testimony that " the only way to explain the employee's advanced stage of cancer so soon after working on Amchitka, is that the cancer preexisted the employee's work on Amchitka and that exposure to radiation or other toxic materials once the cancer process is started does not aggravate or accelerate a preexisting cancer". (http://146.63.134.55/workcomp/2005/05%2D0261.doc). If it is a close call, the Alaska Workers' Comp. Board typically is generous by giving the benefit of the doubt to the employee.

HB31 turns this presumption upside down. As the Director of the Division of Workers' Compensation Paul Lisankie testified, this bill now creates a statutory presumption - so that any qualified fire fighter with the listed cancers will be assumed that the employee received it from the job. This ignores the many other places the employee may have picked up the disease, whether it be from a family member, a friend, a bad tatto or other life-style considerations.

During Tuesday's hearing, Sen. Stevens asked some very good questions regarding the pension systems, where most of these presumptions lay in other states. Most of Alaska's paid fire fighters are now covered by the PERS system. PERS provides both an occupational disability benefit and a non-occupational disability benefit for peace officers and fire fighters, as well as other public employees. (http://www.state.ak.us/drb/pers/police-fire.shtml).

If the disability is occupational, workers' comp. may apply as well. PERS provides a wage supplement, continued medical coverage for the employee and family, and continued service credit until regular retirement is attained - then regular retirement. Even the disability is non-occupational, depending on length of service - must be vested, there are wage replacement benefits.

Regardless of the circumstances, Alaska already treats our first responders fairly and generously. As Sen. Bunde pointed out, other long-term disability products are also available to public employees and the public at-large.

One advantage of leaving these disability benefits to be provided soley by the PERS system is that we do not differentiate remedies between various classes of employees and run into potential constitutional challenges on equal protection issues as other states have experienced. While the frequency of the incidents may be low, the severity of the incidents is extremely high.

HB31 imposes an inequitable benefit for a single class of employees at the expense of the citizens of Alaska. There is no question that the costs of this bill are an unnecessary burden on the public.

I appreciate your resistance to further burdening your local government partners with the fiscal obligations imposed by this proposed law.

Sincerely,

Kevin Smith
Executive Director
AMLJIA

Alaska Independent
Insurance Agents & Brokers, Inc.

Alaska Independent Insurance Agents & Brokers

Position Paper on HB31

The Alaska Independent Insurance Agents & Brokers is a professional trade association representing business people throughout Alaska. We work with our insurance company partners while representing the interests of our clients. Because we deal with the Alaskan consumer on a daily basis, we are particularly sensitive to their needs and concerns. We believe the best consumer protection is a healthy, competitive insurance marketplace.

HB31 - "An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

The Alaska Independent Insurance Agents & Brokers Oppose HB31.

Concerns that we have with this bill include but are not limited to:

- Disease is a health issue and should remain under health coverage rather than making it a workers' compensation benefit.
- Allowing these types of claims to be worker's compensation rather than health will continue to exacerbate the problems in the workers' compensation market.
- It can be incredibly expensive and could eliminate the employer's ability to controvert a claim.

We respectfully request that you consider these issues when reviewing the bill. We welcome the opportunity to discuss the issues with you in more detail.

Sincerely,

Mike Combs, CIC, CRM
President

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CITY OF HOMER
CITY MANAGER
491 East Pioneer Avenue
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April 20, 2006

Senator Con Bunde
Senator Ralph Seekins
Senator Ben Stevens
Senator Johnny Ellis
Senator Bettye Davis

RE: HB 31

Dear Sirs,

The City of Homer opposes HB 31. We already have a system in place that provides medical coverage for firefighters and emergency response professionals that receive an injury or suffer an illness while working. Any employee or volunteer that is exposed to communicable diseases or suffers an injury as a direct result of an emergency response files a first report of injury with the City and is covered for work related injuries or illness.

HB 31 specifically identifies diseases that may not even be directly related to firefighting or first response. In particular specific types of cancer are extremely difficult to determine cause.

The City of Homer's workers compensation insurance has risen astronomically and we cannot afford the additional increase this bill would have on our insurance rates. Our workers compensation insurance costs in 2002 were $86,000 in 2005 $293,247. With escalating health insurance costs and PERS rates the City's benefit costs will soon be exceeding our actual salary budget.

The City of Homer appreciates the brave men and women that serve in our emergency response profession. It has always been and will continue to be our goal to provide them with the equipment and training to do their jobs as safely as possible. We urge you not to support HB 31.

Sincerely,

CITY OF HOMER

Walt Wrede
City Manager

KENAI PENINSULA BOROUGH
RISK MANAGEMENT
144 N. Binkley Street
Soldotna, AK 99669
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Fax: (907) 262-9817

April 20, 2006

The Honorable Con Bunde, Chair, and
The Honorable Ralph Seekins, Vice Chair
Senate Labor and Commerce Committee
Fax: (907) 465-3871

Dear Senator Bunde and Committee:

I am writing in regards to HB 31, which acts to reform presumption for certain diseases under workers' compensation. HB 31 presumes a list of cancers and communicable diseases are a direct result of an employee working as a fire fighter or police officer without linking evidence to the job.

HB 31 is unnecessary legislation covering diseases currently permitted under workers' compensation when medical evidence links them to the employees work. The law already covers legitimate injuries and illnesses incurred while in the course and scope of the job.

The bill presumes some cancers, cardio and respiratory complications are work related. This denies taking into account a person's hereditary or life style choices that can be medically reviewed under the current regulation.

Communicable diseases are less common with today's safety implementations. Use of personal protective equipment (PPE) and following safety procedures greatly reduce the risks of exposure. Under current regulations, incidents are easily identified for required OSHA reporting for needle sticks and exposure to blood or bodily fluids to directly link contact to the employees work.

Legislation was recently approved to assist in keeping the costs of workers' compensation from rapidly rising and attempt to reduce Alaska's position as having the highest premiums in the country. We should allow the reforms to show results before expanding on benefits that will complicate a positive outcome.

As a local government and school district for the Kenai Peninsula, we already have financial burdens with costs due to significant increases to PERS, utilities, fuel, and health care. Please consider the financial affect HB 31 would have on serving our local community and deny this bill.

Sincerely,

Wendy Focose
Workers' Compensation Manager

cc. WC-032-06

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April 13, 2006

The Honorable Con Bunde, Chair, and
The Honorable Ralph Seekins, Vice Chair
Senate Labor and Commerce Committee
Alaska State Capitol
Juneau, Alaska 99801

RE: Oppose HB31

Dear Senator Bunde and committee members:

The Alaska Municipal League Joint Insurance Association (AMLJIA) opposes HB31.

The AMLJIA is a joint insurance arrangement organized under AS 21.76. With approximately 146 member municipalities and school districts pooling for workers' compensation coverage, these local government entities bear the single largest exposure to changes in workers' compensation law as it applies to employees such as firefighters, EMTs, and police.

HB31 creates a presumption of workers' compensation coverage for firefighters for cardio/respiratory problems, as well as a variety of cancers for firefighters with 10 or more years of service. All of these are chronic diseases that often have genetic and lifestyle choices as their cause.

HB31 further adds a presumption of workers' compensation coverage for several contagious diseases for employees whose jobs may include contact with bodily fluids.

The presumptions are unnecessary and potentially very costly. Present fire fighting technology and procedures call for use of personal protective equipment such as respirators and breathing dams. When following best practices and department procedures, the risk of contracting illnesses such as those listed in the bill is greatly reduced.

Currently, if a firefighter contracts a respiratory or heart disease and claims that it is work-related, it is up to the employer to demonstrate that it is not. These claims are covered by workers' compensation already. By creating a strict presumption, the claim will most often be covered by the workers' comp. system, even when it is not work - related.

The communicable disease provisions are also problematic. When EMTs, firefighters and others properly use personal protective equipment, the incidence rate of bloodborne diseases should be lower than the general population, not higher. In addition, exposures

to blood and needlesticks are events that are generally indentifiable. There should be no doubt as to what day a firefighter gave mouth-to-mouth resuscitation to a victim or an EMT is accidentally stuck by a syringe. Therefore, the present system covers the work-related events just fine. Providing a presumption is unnecessary and would provide workers' compensation coverage to people who contract hepatitis, TB, HIV, AIDS or meningitis through more conventional means such as poor hygiene, unprotected sex, or even a dirty needle at a tattoo parlor.

These protections are offered once employees are cleared of pre-existing diseases by a medical screening. This presents a two-fold problem. One, the screenings may not be effective for latent diseases such as cancer. Two, depending upon the patient's age, the cost of such screenings approach $1,000 a piece, according to the Fairbanks Fire Department. Since the municipality would be required to bear the cost of such an exam, the overall costs of initial screenings statewide are estimated at $8 million, with annual recurring costs after that.

The National Council on Compensation Insurance (NCCI) promulgates the starting rates for all carriers and pools in Alaska. The NCCI estimates the cost to municipalities for the affected job classes to increase 10 to 20 percent, based on the presumptions in the bill. Worse yet, the bill is retroactive in nature, providing coverage for claims "even if the exposure leading to the occupational disease occurred before the effective date of this Act." These claims were never contemplated in the calculation of rates in the past and would be unfunded

There is no more expensive way to pay for an injury or illness that our current workers' compensation system. Health programs are able to control medical costs through negotiated agreements with health care providers. Workers' compensation can not. It is interesting to note that both workers' compensation and the health benefits are generally provided by the employer, at least with respect to the career firefighter.

As you likely know, Alaska's workers' compensation rates are the second highest in the nation. This crisis in workers' compensation costs contributes to some local governments and businesses closing their doors. As you'll recall, we have only begun to fix our workers' comp. problem less than one year ago. We should give the reforms some time to work, not immediately step in the opposite direction by expanding benefits. Please consider the negative financial impacts this legislation would have on the State's political subdivisions.

Thank you.

Kevin Smith
Executive Director

National Council on Compensation Insurance, Inc.

March 1, 2005

NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.

ANALYSIS OF ALASKA HOUSE BILL 31

The enactment of House Bill 31 could produce a significant increase in loss costs for the relatively few class codes directly impacted (particularly firefighters). Note that the proposed language allows for coverage of claims made after the effective date of the proposal, regardless of whether or not the exposure leading to the occupational disease occurred before the effective date. Therefore, it is expected that there would be a significant impact on total system costs due to the retroactive nature of this proposal.

Summary of Bill

HB 31 creates a presumption of workers compensation coverage for firefighters for the following occupational diseases:

Respiratory disease
Heart problems that are experienced within 72 hours after exposure to smoke, fumes, or toxic substances
After 10 years experience:
- Primary brain cancer
- Malignant melanoma
- Leukemia
- Non-Hodgkin's lymphoma
- Bladder cancer
- Ureter cancer
- Kidney cancer

HB 31 would also create a presumption of workers compensation coverage for employees in occupations involving exposure to human blood or bodily fluids for the following diseases:

Human immunodeficiency virus
Acquired immunodeficiency syndrome
All strains of hepatitis
Meningococcal meningitis
Mycobacterium tuberculosis

Currently, the employee has the burden of proof for compensability of a workers compensation disability claim. This proposal establishes a presumption of coverage, which must be overcome by a preponderance of evidence to the contrary. This would now place the burden of proof on the employer (and insurer.)

Additionally, this proposal could increase the frequency and total cost of claims in some classes (i.e. firefighters) significantly. It should also be noted that much of the impact for some of these classes would be felt by governmental entities as the employer of many of those being impacted by this proposal.