

Approved: 3/10/99  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS.

The meeting was called to order by Chairperson Representative Susan Wagle at 1:30 P.M. on March 3, 1999 in Room 313-S of the Capitol.

All members were present except:

Rep. Mason, excused

Committee staff present:

Theresa Kiernan, Revisor of Statutes  
Mary Galligan, Legislative Research  
Russell Mills, Legislative Research  
Judy Swanson, Committee Secretary

Conferees appearing before the committee:

Jim Kaup, City of Topeka  
Don Moler, Ks League of Municipalities  
Scott Hattrup, Sportsman's Alliance  
Phil Journey, Kansas Second Amendment Society  
Kansas State Rifle Association  
Bob Hodgdon, Hodgdon Powder Co., Overland Park  
Jerry Palmer, Kansas Trial Lawyers Association

Others attending:

See attached list

Chair Wagle distributed copies of a revision for the parental consent bill. The revision basically would take current law and change notification to consent. She announced the bill will be discussed at a later date.

Hearing was opened on **HB 2540**, Limitations on actions against firearms and ammunition dealers. Revisor of Statutes Theresa Kiernan reviewed the bill for Committee members. Chair Wagle provided members with information on product liability and consumer protection from the National Rifle Association. (Attachment #1)

Jim Kaup, City of Topeka, opposed the bill because of the need to preserve existing city legal authority. He asked the Committee to kill the bill, however if the bill is passed out of Committee he requested several changes. (Attachment #2)

Don Moler, Kansas League of Municipalities, testified in opposition to **HB 2540**. He said if this bill were passed, some other group will ask the legislature in the future for the same consideration. (Attachment #3)

Scott Hattrup, Sportsman's Alliance, supported **HB 2540**. (Attachment #4) He said here were two main problems with allowing cities to sue manufacturers. First it is a by-pass of the legislative process, and the second problem is that lawsuits like these are anti-business.

Phil Journey, President Kansas Second Amendment Society and Director at Large of Kansas State Rifle Association, testified in favor of the bill. He said this legislation is a reaction to lawsuits filed by cities such as Chicago and Atlanta. (Attachment #5)

Bob Hodgdon, President of Hodgdon Powder Company, Overland Park, told members he has plants in Herington, Topeka, Shawnee, and Overland Park with a \$3.5 million payroll. He said the firearms industry goes far beyond the manufacture of guns and ammunition. (Attachment #6) He urged the Committee to pass the bill.

Jerry Palmer, Kansas Trial Lawyers Association, took no position on **HB 2540**, however he addressed Section I (b) and suggested it be deleted. (Attachment #7)

Written testimony was presented from Jeff Freeman, National Rifle Association. (Attachment #8)

Committee members discussed the bill and questioned the conferees on the need for Section I(b).

Scott Hattrup agreed the suggested amendment of the City of Topeka appeared agreeable to him. Jerry Palmer also said the proposed amendment appeared agreeable to him. Hattrup said he thought removing Section B would strike the enabling clause.

Theresa Kiernan said Section I refers to county or municipality, but municipality is not defined. Section II refers to political subdivisions which is broader in scope. Hattrup said Line 20 should also say "political subdivisions". Hattrup said "negligent marketing" is not appropriate to this bill.

Jim Kaup, City of Topeka, asked to be recorded that he does not want any amendment to be referred to as "Topeka's amendment" as Topeka does not support the bill!

Hattrup does not want to take away any individual's right to sue.

Hearing on **HB 2540** was closed. Chair Wagle announced that she would like action taken on this bill at the March 4 Committee meeting.

Representative Vickery requested the Committee introduce another bill on the Range Protection Act. Rep. Freeborn made a motion the Committee introduce such bill. Rep. Ruff seconded the motion. The motion passed.

Rep. Franklin made a motion that the Committee introduce a bill concerning an educational assessment program. Rep. Dahl seconded the motion. The motion carried.

Rep. Burroughs made a motion to introduce a Committee bill concerning aggravated battery against a law enforcement officer with a vehicle. Rep. Ruff seconded the motion. The motion carried.

Rep. Freeborn made a motion to amend the Minutes of the February 18 Committee meeting concerning discussion on **HB 2240** to read as follows: "Rep. Freeborn said she had polled each of the sheriffs in her district and received no negative responses and one favorable response for the bill." Rep. Dahl seconded the motion. The motion passed.

Rep. Gilbert made a motion to approve the Committee meeting minutes from the Feb. 18 meeting as amended, and minutes from Feb. 22, 23, 24 and 26 as presented. Rep. Peterson seconded the motion. The motion passed.

Meeting adjourned at 2:30 P.M.

**HOUSE FEDERAL & STATE AFFAIRS**

**GUEST LIST**

**DATE:** 02/03/99

NAME	REPRESENTING
STEVE KEADNEY	FOP - STATE LODGE 3
George Peterson	KTN (Private citizen)
Alex A. Kobyanetz	JC/Gear Co. Conventions Bureau
JOSEPH T. GIMAR	KS. ST. FLORIANAL ORDER/POLICE
DAVE MENECEY	SHAWNEE COUNTY SHERIFF
Shelley Rogers	CHIPPEN
Sharon M. Jordan	Private citizen
Betty L. Leach	citizen of U.S.
David Stanley	private citizen
Jon Holder	Private Citizen
Brian Leiminger	KHP
JAMES CLARK	
Jami Kaska	Senate Majority Whip
Marc Hamann	Div. of the Budget
Alvan A. Johnson	WASP / REP.
GARY HARTZELL	P.C.
Al Monahan	Vandalia / ASRA
Helene Buehler	Dodge City, KS - citizen



**HOUSE FEDERAL & STATE AFFAIRS  
GUEST LIST**

**DATE:** 3.3.99

NAME	REPRESENTING
Hannelen M. Huttmann	Leadership Olathe '99
CHRIS BROWN	LEADERSHIP LENEXA 1999
D. Koettel	" N.E. Jo Co.
Julio King	Leadership Olathe
Todd S. Hart	Leadership Olathe
D. J. Gilman	Myself
Scott Conway	Leadership OP
Se. Gilhaus	Leadership OP.
Rep. John Toplikar	Olathe 15th Dist.
Ashley Sherard	Overland Park Chamber
Kelly Kuitala	City of Overland Park
Lyn Males	LKIM
Laura Gentry	PBP Nation
Deby Fleming	Federal Consulting
Paula Stewart	KTLA
Gregory Palmer	KTLA
Craig Katusa	KSSportsmen & Allies
LB	KSA
Derek A. Blevack	Intern For Bill Speed



**HOUSE FEDERAL & STATE AFFAIRS  
GUEST LIST**

**DATE:** 03-03-99

NAME	REPRESENTING
George Peterson	Ks Taxpayers Network
Phillip Journey	Ks. Second Amend. Society
Tom Cole	Lenexa EDC
Amy Slater	Yellow Services
Chris Thompson	JOCO Mental Leadership
JAMES CHARK	KC DAA
BILL ROBERTSON	Leadership Overland
Kevin Ost	"
Marc Hamann	Div. of the Budget
Paul L. Richmond	Leadership Lenexa
Cindy Brock	Leadership Lenexa
Fred Kolon	" Olathe
VERNON WATSON	Leadership Olathe
LARRY D. PARKS	Leadership Olathe
Frank Galbrecht	" "
BOB G. HUMPHREY	" "
Chrysalyn R Huff	Leadership Olathe - Business Owner
John Klingert	
Greg D. Hill	Federico Consulting



## NRA-ILA ISSUE POINTS

- When criminals commit crimes with guns, the criminals are to blame, not law-abiding firearm companies and gun shops.
- Gun control supporters pursue frivolous lawsuits based on radical theories of product liability, because they want to bankrupt law-abiding firearm companies and gun shops. Fortunately, the courts have tossed these lawsuits out on their ears.

# PRODUCT LIABILITY & "CONSUMER PROTECTION"

## BACKGROUND

In the 1980s, gun control advocates began promoting lawsuits that sought to hold firearm manufacturers and sellers strictly liable for injuries resulting from nothing more than the misuse, by third parties, of firearms that operated properly and had no defects in design or manufacturing.

When their "defectless" theories were rejected by court after court, anti-gun litigators conceived of an even more preposterous torture of tort law: "collective liability." Today, several cities such as Chicago and New Orleans are suing gun manufacturers as a group for the law enforcement and public health expenses they incur from gun injuries and deaths. The cities share a feverish desire for courts to punish lawful gun manufacturers for past sales that comply with existing gun laws.

Unsurprisingly the most anti-gun administration in American history is sympathetic to efforts to push lawsuits that seek damages from gun manufacturers. "It is an issue that the President will follow closely," said White House Spokesman Joe Lockhart. (*Dow Jones Newswire*, Jan. 5, 1999) It has been noted that Lockhart's comment that Clinton will be watching the gun company lawsuits, echoes virtually word-for-word the official White House stance on the tobacco lawsuits.

The lawsuit filed by Chicago Mayor Richard Daley seeks \$433 million in damages, alleging the industry saturates the legal market for guns, knowing the surplus will end up in criminal hands. A Nov. 14, 1998, editorial in the *Chicago Tribune* said the mayor's anger at the misuse of handguns is understandable, but went on to say:

[Mayor Daley's] lawsuit is wrongheaded and ill-advised. It represents an abuse of the tort liability system and a dangerous extension of the tactic—employed in similar lawsuits against the tobacco industry—of using potentially bankrupting lawsuits to force makers of legal but unpopular products to quit.

Unlike the tobacco companies, gun manufacturers have strong arguments for the substantial benefits their products offer consumers. Every year in America, guns are used three to five times more often for protection than they are misused by criminals. Also, across America crime rates are lowest where gun ownership rates are highest.

While less than 1% of the guns in America are used in violent crime in a given year, guns are misused in approximately 450,000 crimes. More

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Attachment #1

# ISSUE POINTS

Importantly, however, far more Americans each year use guns to protect themselves and their families. Guns are used defensively approximately 2.5 million times a year, and in 98% of those cases, merely brandishing the firearm stops the attack. The lawsuits in question totally ignore the benefits of the products made by the manufacturers they seek to destroy.

The Chicago suit accuses 12 suburban gun shops, 22 gun manufacturers and four gun distributors of creating “a public nuisance,” alleging that they “knowingly design, market and distribute firearms in order to facilitate their illegal entry into and possession in Chicago, where they are illegal to possess and where they often are used in the commission of crimes.”

Returning briefly to the *Tribune* editorial, “the Chicago lawsuit attempts to elevate good morality—not to sell guns to people you have reason to think are bad guys—to the level of a legal requirement that no legislature has seen fit to impose. And having done that, it seeks to use the courts and the public treasury to make the gun industry comply—or face bankruptcy.”

The *Tribune* editorial writer is hardly alone. Courts have had the following to say:

“[N]o Illinois decision has imposed a duty upon the manufacturer of a non-defective firearm to control the distribution of that product to the general public, such regulation having been undertaken by Congress” and state and local governments.—*Linton v. Smith & Wesson*, 469 N.E.2d 339, 340 (Ill. App. Ct. 1985)

“Under all ordinary and normal circumstances in the absence of any reason to expect the contrary, the actor may reasonably proceed with the assumption that others will obey the criminal law.—*Bennett v. The Cincinnati Checker Cab*, citing Prosser, Tort, 3d Edition, 353 F. Supp. 1206, 1209 (E.D. Kent. 1973)

There is “no duty upon a manufacturer of a nondefective product to anticipate the various unlawful acts possible through the misuse of that item.”—*Bennett v. The Cincinnati Checker Cab*, 353 F. Supp. 1206, 1209 (E.D. Kent. 1973)

New Orleans Mayor Marc Morial seeks to penalize 15 manufacturers and distributors, in essence, for not making guns “smarter.” A gun manufacturer, the New Orleans suit alleges, should make a gun that can only be fired by its owner. Mayor Morial appears to be unconcerned that the technology he demands has yet to come off the drawing board.

Prominent in Mayor Morial’s complaint are the deaths of three New Orleans children accidentally killed with guns since 1992. According to the latest figures from the National Center for Health Statistics, in 1996, 138 children died in gun accidents, compared to 3,015 in car crashes and 966 in drownings. Fatal gun accidents accounted for 2.2% of the accidental deaths for children aged 15 and younger in 1996.

- Most Americans and legislators support the right to own firearms. Therefore, gun control supporters are trying to have radical gun control imposed by the courts. Fortunately, the courts have recognized the purpose of the lawsuits and have spoken out against it.
- Lawsuits trying to bankrupt law-abiding firearm companies, because some criminals used a gun to commit a crime, are even more preposterous than most personal injury lawsuits, and the courts have rejected them one after another.



In the Dec. 21, 1998 issue of *National Review*, John R. Lott, University of Chicago law professor, correctly frames the debate: "The futuristic guns advocated in the New Orleans suit, such as guns activated by a radio signal from a wristband, are far from reliable and will cost \$900 when they are finally available." The cost, Lott says, "will fall far more heavily on law-abiding citizens than on criminals—decreasing the number of innocent people who could use guns to protect themselves." The debate, Lott says, should be over: "How many of the 200 accidental child deaths will be avoided? *vs.* How will such rules affect people's ability to defend themselves (and their children)? But this is a debate that the city with good reason deliberately ignores."

These latest charges against the firearms manufacturers are being provoked by trial lawyers, including several who successfully sued the tobacco companies. As the *Wall Street Journal* noted in a Nov. 16, 1998, editorial:

In their get-richer-quick dreams, the lawyers are hoping the gunmakers will be cowed into surrendering without the tort sharks ever having to argue, let alone prove, a case in court. The mayors probably should have thought twice before letting their reputations be used as chum for this fishing expedition. Sure, in the tobacco cases states and their lawyer pals made off with a haul, but the crusade didn't play so well at the polls this month. All four of the politicians who trumpeted tobacco spoils were handed their heads by voters.

Perhaps the American voters were sending a message, a message that they do not countenance using the courts to sidestep the democratic process in order to enact *de facto* bans on lawful products.

This concept of using lawsuits to destroy a lawful and constitutionally-protected activity—violates longstanding American principles. In *New York Times v. Sullivan* (376 U.S. 254, 256, 1964), the Supreme Court held that civil law suits cannot make it impossible for a free press to survive. That decision was based on the intent of the Framers, with respect to the First Amendment, that citizens should not be punished or suffer financially for criticizing public officials. In his concurring opinion, Justice Hugo Black noted the observance of St. George Tucker, that "Whenever . . . the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."

Courts have taken a dim view of lawsuits attempting to achieve "gun control" through judicial means, as the following examples illustrate:

Such lawsuits are "an obvious attempt—unwise and unwarranted—to ban or restrict handguns through courts and juries, despite the repeated refusals of state legislatures and Congress to pass strong, comprehensive gun-control measures."—*Patterson v. Rohm Gessellschaft*, 608 F. Supp. 1206, 1211 (N.D. Tex. 1985)  
"[T]he failure of the legislatures to enact laws sufficient to curb

## ISSUE POINTS

- Unlike the tobacco companies, gun manufacturers have strong arguments for the substantial benefits their products offer consumers.
- Every year in America, guns are used three to five times more often for protection than they are misused by criminals.

- The lawsuits in question to- tally ignore the benefits of the products made by the companies they seek to destroy.

- The New Orleans suit seeks to penalize gun companies for not using technology that has yet to be made practical.

handgun injuries is not adequate reason to engage the judicial forum in efforts to implement broad policy changes.”—*Wasylow v. Glock, Inc.*, No. 94-11703-DPW, slip op. at 19 (D. Mass. Apr. 4, 1996)

“Although [a gun control] policy may be adopted by the legislature, it ought not be imposed by judicial decree.”—*Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1298, (Ill. App. Ct., 1985)

“[I]t is for the Legislature to decide whether manufacturer, sale and possession of firearms is legal. To date, manufacture, sale and ownership of [firearms] have been legally permitted.”—*Forni v. Ferguson, et al*, 648 N.Y.S.2d 73, 73-74 (N.Y. App. Div. 1996)

Traditionally, in product liability cases, plaintiffs have been able to sue a manufacturer or seller of a product for compensation for injuries sustained because a product is defective, the defect poses an unreasonable danger to the user, and the defect caused the injury. A product may be considered “defective” if it does not operate as a reasonable manufacturer would design and make it, as a reasonable consumer would expect, or as other products of its type. The Restatement of Torts defines a “defect” as “a condition not contemplated by the ultimate consumer, which would be unreasonably dangerous to him” and defines “unreasonably dangerous” as “dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.”

Courts have uniformly held that some defect must exist in the product at the time it was sold, and that the plaintiff’s injury must have been the result of that defect. Defendants cannot be held liable for injuries that occur merely because a properly operating product is criminally or negligently misused. Several firearm-related product liability decisions serve to illustrate:

- “The three necessary elements needed to properly state a good cause of action in strict liability are (1) that the injury resulted from a defective condition of the product, (2) that the defective condition made the product unreasonably dangerous, and (3) that the defective condition existed at the time the manufactured product left the manufacturer’s control.”—*Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1298, (Ill. App. Ct., 1985)
- There are “[f]our elements a plaintiff must prove to recover damages in a product liability suit. Those four elements are: ‘(1) that the product was defective, i.e., unreasonably dangerous to normal use; (2) that the product was in normal use at the time the injury occurred; (3) that the product’s defect caused his injury; and (4) that injury might reasonably have been anticipated by the manufacturer.’”—*Richman v. Charter Arms Corp.*, No 82-1314 (E.D. La., 1983)

“The mere fact of [ ] does not entitle the [person injured] to recover . . . there must be something wrong with the product, and . . . there is nothing wrong there will be no liability.”—*DeRosa v. Remington Arms Co.*, 509 F. Supp. 762, 769 (E.D.N.Y. 1981)

- “There can be no product liability recovery unless the product does have defect. Without this essential predicate, that something is wrong with the product, the risk/utility balancing test does not apply.” A handgun cannot be considered defective if “it performed exactly as a handgun is intended to do, by firing a bullet with deadly force when the trigger was intentionally pulled.”—*Patterson v. Rohm Gessellschaft*, 608 F. Supp. 1206, 1211 (N.D. Tex. 1985)

However, firearm ownership opponents have tried to advance various “defectless” product liability theories which, generally, seek to have strict liability imposed on firearm manufacturers and sellers for injuries resulting from the misuse of firearms that are not defective. Under such theories, it is irrelevant whether the injury resulted because the firearm was criminally or negligently misused. Firearms are “inherently defective” and “inherently dangerous” because they function as intended, that is, by firing bullets that can inflict injury. The marketing of firearms is, thus, an “ultrahazardous activity.”

Courts have rejected these theories, noting that firearms are not defective if they perform as intended and that the general purpose of firearms is well understood by reasonable people.

- “[T]he mere fact that a product is capable of being misused to criminal ends does not render the product defective.”—*Armijo v. Ex Cam., Inc.*, 656 F. Supp. 771, 773 (D. N.M. 1987)
- “An objective and reasonable adult user of a cocked and loaded revolver would never ‘fiddle’ with the hammer and apply pressure to the trigger while it was aimed in the direction of another person.”—*Treadway v. Smith & Wesson Corp.*, No. 95-CV-75801-DT, slip op. at 10 (E.D. Mich. Oct. 25, 1996)
- “One should never point a gun at another, thinking it is unloaded. And one should never compound the felony by pulling the trigger. When these cardinal rules are violated, the victim has an airtight negligent suit against the shooter. He has no case against the gun maker.”—*Eichstedt v. Lakefield Arms*, No. 91-C-832, slip op. at 14 (E.D. Wis. Apr. 22, 1994)
- “Only a defective person would fail to realize the obvious dangers” in gripping a handgun, pointing it at another person and squeezing the trigger. “[O]nly deliberative action will cause [the handgun to] discharge. When properly handled, the gun can be safely used.”—*Taylor v. Gerry’s Ridgewood*, 490 N.E.2d 987, 991 (Ill. App. Ct. 1986)
- “A product is in a ‘defective condition’ where the condition is not one contemplated by the ultimate consumer, which condition causes the

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# NOTES

product to fail to perform in the manner reasonable to be expected in light of its nature and intended function. . . . [A handgun's] concealable design does not create a condition not contemplated by the user of the handgun. Therefore, the handgun's design is not defective. . . . This court cannot conceive a danger arising from concealability above which would be beyond the user's expectations."—*Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1298, (Ill. App. Ct.,1985) The plaintiff had argued that a particular handgun was inherently dangerous because it was small.

- “[C]haracterizing one type of gun as presenting a greater risk of harm or as being more susceptible of criminal misuse than another type becomes extremely tenuous.”—*Addison v. Williams*, 546 So.2d., 220, (La. App. 2 Cir. 1989)
- “[Common sense requires the Court to find that the risks involved in marketing handguns for sale to the general public are not greater than reasonable consumers expect. Every reasonable consumer that purchases a handgun doubtless knows that the product can be used as a murder weapon. This knowledge, however, in no way deters reasonable consumers from purchasing handguns.”—*Richman v. Charter Arms Corp.*, No 82-1314 (E.D. La., 1983)
- “Given the prominence of the handgun issue in public debates, the only plausible explanation for the refusal to ban handgun sales to the general public, either by statute or by constitutional amendment, is that a majority of the legislators thinks such a ban would be undesirable as a matter of public policy. The inference that the court should draw from this is clear: the legislature does not think handgun manufacturers act unreasonably (are negligent per se) when they market their product to the general public.”—*Richman v. Charter Arms Corp.*, No 82-1314 (E.D. La., 1983)

Despite the fact that the manufacture, sale and possession of firearms are legal under federal law and the laws of all the states, and despite the fact the constitutions of the U.S. and 44 states protect the right to keep and bear arms, anti-gun lobbyists insist that firearms are ‘socially unacceptable’ and the risk of firearms to the public outweighs their social utility. Courts have not agreed:

- “Plaintiffs contend that . . . a jury could find the .38 caliber Llama automatic pistol socially unacceptable. . . . Plaintiffs’ argument, however, has been rejected by nearly every court that has considered the issue.”—*Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1298, (Ill. App. Ct.,1985)
- “It is not for this court to determine the social utility of products used by the American people.”—*Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1298, (Ill. App. Ct.,1985)
- “The legislature has on numerous occasions in the past ten years con-

sidered banning handguns and has consistently rejected the proposal. . . . Thus the clear inference is that the majority of legislators in Massachusetts also do not feel that the marketing of handguns to the public is an unreasonably dangerous activity or socially unacceptable.”  
—*Mavilia v. Stoeger Industries*, 574 F. Supp. 107, 111 (D. Mass., 1983)

The definitive study on the private use of firearms for crime prevention found that nationwide there are approximately 2.5 million self-protective uses of firearms annually, compared to roughly 500,000 firearm-related violent crimes reported by the FBI. (“Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun,” Gary Kleck and Marc Gertz, *Journal of Criminal Law and Criminology*, Fall 1995)

The definitive study of state laws allowing law-abiding citizens to carry firearms in public, for protection, found that “allowing citizens to carry concealed weapons deters violent crimes and it appears to produce no increase in accidental deaths. If those states which did not have right-to-carry concealed gun provisions had adopted them in 1992, approximately 1,570 murders; 4,177 rapes; and over 60,000 aggravated assaults would have been avoided yearly. . . . [T]he estimated annual gain from allowing concealed handguns is at least \$6.214 billion. . . . [W]hen state concealed handgun laws went into effect in a county, murders fell by 8.5 percent, and rapes and aggravated assaults fell by 5 and 7 percent.” (“Crime, Deterrence, and Right-to-Carry Concealed Handguns,” John R. Lott, Jr., and David B. Mustard, *The Journal of Legal Studies*, January 1997)

Even if the cost-benefit question is limited to certain classes of firearms, the conclusions will be the same. While gun control advocates have campaigned for restrictions on handguns they dub “Saturday Night Specials” and firearms (mostly rifles) they dub “assault weapons,” statistics show that neither class of firearm dominates criminal firearm use, and surveys have found that criminals prefer and use other types of firearms.

Most criminals get their firearms through unregulated channels, mostly through theft and the black market. (*Armed and Considered Dangerous*, James Wright and Peter Rossi for the Department of Justice, 1986; *Protecting America*, Bureau of Alcohol, Tobacco and Firearms, 1992). Raising the price of legally sold firearms would have little effect on illegal criminal firearm acquisitions.

Additionally, as Prof. Daniel D. Polsby of the Northwestern University School of Law has noted, “In order to predict who will comply with gun control laws, we should remember that guns are economic goods that are traded in markets. Consumers’ interest in them varies. . . . Where people differ is in how likely it is that they will be involved in a situation in which a gun will be valuable. Someone who *intends* to engage in a transaction involving a gun—a criminal, for example—is obviously in the best possible position to predict that likelihood. Criminals should therefore be willing to pay more for a weapon than most people would.”

### Consumer Product Regulations

- Congress has recognized that firearms aren't traditional "consumer products" but rather are among the few products the Bill of Rights protects the people's right to own.
- Would-be gun regulators suggest guns could be made so that they could be presumed to be unloaded. Such a notion flies in the face of firearm safety rules as old as guns themselves.
- The anti-gun refrain: "In America, Teddy bears are more regulated than guns," is a fraud. Firearms makers must comply not only with federal, state and local laws but also constantly reviewed manufacturing standards.
- The Sporting Arms and Ammunition Manufacturers Institute, which was established at the request of the federal government, publishes more than 700 voluntary standards related to firearm and ammunition quality and safety.
- Firearms safety training—such as that offered by 39,000 NRA Certified Instructors—has led to a steady and pronounced decline in fatal firearms accidents over several decades.

In addition to product liability lawsuits, gun control supporters have believed they could have their agenda imposed by having Congress and/or the state legislatures give administrative agencies the authority to impose restrictions on firearms design, under the heading of "consumer products safety."

Today's anti-gun activists are trying to revitalize their predecessors' regulatory agenda. Their common refrain: "In America, Teddy bears are more regulated than guns." But that refrain is a fraud. U.S. firearms makers not only comply with a tangled web of federal, state and local laws, their manufacturing standards are reviewed by FBI, the U.S. Customs Service, various other public and private agencies, and even the Royal Canadian Mounted Police. Industry standards are set by the Sporting Arms and Ammunition Manufacturers Institute (SAAMI), an organization founded in 1926 at the request of the federal government. Today, SAAMI publishes more than 700 voluntary standards related to firearm and ammunition quality and safety.

SAAMI is an accredited standards developer for the American National Standards Institute (ANSI). These standards are reviewed by outside parties, such as the National Institute of Standards and Technology, and every five years the validity of the standards is re-affirmed. The U.S. Armed Forces, the FBI and many other state and local agencies frequently require that their firearms are manufactured in accordance with SAAMI specifications.

When Congress created the Consumer Product Safety Commission in 1972, concern was expressed that the CPSC would impose back-door gun controls by administrative regulation, despite legislative history clearly showing that Congress intended to reserve to itself decisions on gun control. Congress settled the question in 1976, voting overwhelmingly (76-8 in the Senate and 313-86 in the House) to exempt the firearms and ammunition industries (and certain other industries) from the Consumer Safety Protection Act of 1972.

Congress recognized that firearms aren't traditional "consumer products." Like the tools of a free press, firearms are among the few products that the Bill of Rights specifically protects the right of the people to own, possess and use. Congress clearly stated its intent: "The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, ammunition, including black powder or gun powder, for firearms."

While standard consumer product safety regulations are intended to require manufacturers to correct real defects in products that are discovered to be dangerous in ways not initially envisioned or desired by the manufacturer, regulations dreamed of by gun control supporters would place unreasonable requirements upon firearms manufacturers, resulting in firearms being as unusable and expensive as possible.

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The anti-gun-oriented "consumer product safety regulation" concept is based upon several flawed presumptions:

- that firearms can be designed by bureaucrats with no technical knowledge of firearms engineering, firearms uses, or the preferences of consumers
- that firearms should be designed the same, without concern for the varied needs of individual gun owners and the purposes for which firearms are used
- and that people who buy guns are generally careless and irresponsible, leaving guns lying around to be picked up by small children.

Additionally, it is unlikely that any regulation on firearms design would immediately require previously-made firearms to be retrofitted. Accidents might increase because of confusion over whether firearms possessed new design features.

Would-be gun-regulators dangerously suggest that guns could be made in a manner so that they could be presumed to be unloaded and, thus, handled in no particular manner. Instead firearms should never be presumed to be "unloaded," and should always be handled according to strict firearm safety rules.

The notion that safety with firearms can be achieved by guns themselves, rather than by the conduct of gun owners, is rejected by safety training experts and is fundamentally at odds with long-standing safety rules governing the handling of guns. Training gun owners in gun handling procedures has resulted in a steady and pronounced decline in fatal firearm accidents over several decades.

## ISSUE POINTS

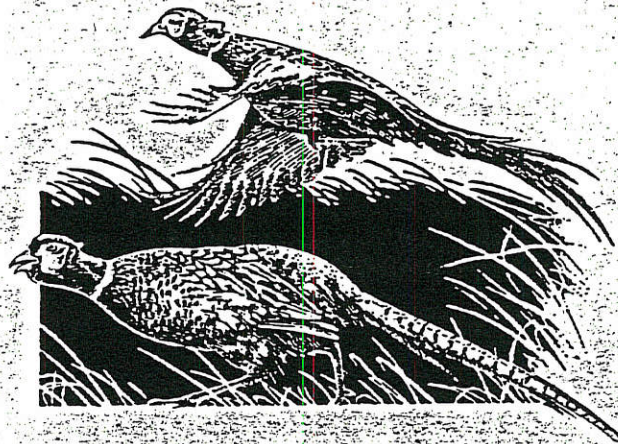
- No bureaucrat knows what each and every gun owner needs in a firearm.
- The idea of subjecting firearm design to government-appointed bureaucrats is something dreamed up by gun control groups. Their purpose is not to build a better firearm, but to regulate firearm companies out of business.
- Gun owners know what kinds of firearms they want, and firearm companies do a first-rate job of building them.
- Firearm safety comes from educating and training people properly, not from mechanical gadgetry.
- What the gun control groups are advocating is a situation in which new firearms would be made one way, while firearms already in existence are made another. All this would do is confuse people about how to handle firearms, and it might lead to an increase in accidents.

# KANSAS SPORTSMEN

*Spend \$555 Million each year!*

*These expenditures support.....*

- 14,500 Jobs
- \$ 255 Million Salaries and Wages
- \$ 32 Million State Tax Revenue
- \$ 1.1 Billion Ripple Effect on the State Economy



*Did you know.....*

- Money spent annually by Kansas sportsmen equals half the value of the state's wheat harvest
- Total spending by Kansas sportsmen could buy 6 NFL game tickets for every resident
- Total state tax money generated by Kansas sportsmen equals \$12.40 per state resident
- Total state tax money generated by Kansas sportsmen could purchase 21,200 computers for local schools
- Kansas sportsmen ( 437,000 ) outnumber the combined populations of Wichita and Topeka

*For more information please contact:  
The Congressional Sportsmen's Foundation  
(202) 785-9153*



*The Congressional Sportsmen's Foundation (CSF) is the sportsmen's link to Congress. We ensure that sportsmen have a strong voice in decisions that affect the outdoors. The foundation stresses the importance of hunting and fishing to our economy and to traditional American values. Prepared for the CSF by Southwick Associates.*

## Funds Generated by Sportsmen for State Fish & Wildlife Conservation

Sport Fishing Excise Taxes	\$ 3.0 Million
Hunting Excise Taxes	\$ 3.4 Million
License Revenue	<u>\$ 15.2 Million</u>
<b>Total Revenue</b>	<b>\$ 21.6 Million</b>



# Trial lawyers target rule of law

By Bill Pryor

In 1997, I wrote several newspaper opinion pieces warning that the lawsuits filed by state attorneys general against the tobacco industry threatened "the entire business community." Recently, the tobacco precedent has been followed by big-city mayors, including Bill Campbell of Atlanta, who have filed suit against the gun industry. This dangerous marriage of tort lawyers and governments must be severed soon before it further weakens what remains of limited government, the rule of law and respect for individual responsibility in this nation.

When the first tobacco suits were filed, few observers considered the suits a threat to the industry. That miscalculation should not recur. Trial lawyers, richly rewarded for providing financial support for the tobacco suits, have even more resources as they now undertake the gun suits. When filing these suits, trial lawyers select judges known to be susceptible to ignoring legal doctrines. The judges pander to their trial-lawyer friends, who, in turn, contribute to judicial election campaigns, and the judges bask in the media attention that accompanies their "landmark" rulings. Against this corrosive backdrop, a high-profile public relations campaign can be mounted by political clients (e.g., mayors, attorneys general) who extol the virtues of their "public interest" litigation. Framed as a crusade to protect innocent kids, the campaign attracts a host of liberal interest groups.

If you think tobacco products are different from guns, think again. The gun industry will correctly argue, as did big tobacco

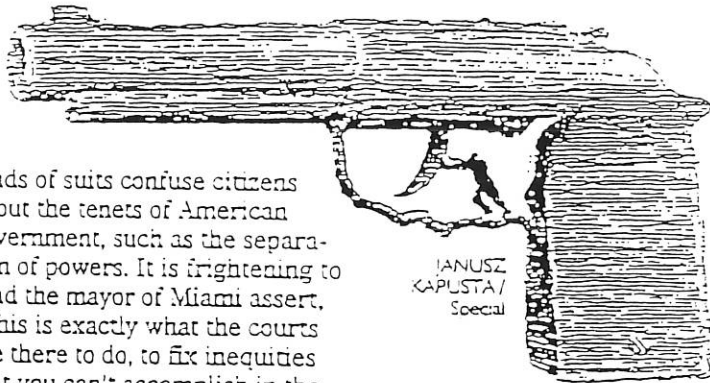
that the dangers of firearms are well-known and those risks must be assumed by the users. Trial lawyers will counter, however, that the cities do not assume those risks but must bear the costs associated with gun crimes. When the gun industry correctly argues that it provides legal products for law-abiding citizens to defend themselves against crime, the trial lawyers will say, with a straight face, that this benefit is irrelevant because the industry created the crime problem that required citizens to defend themselves.

These lawsuits threaten limited government because they shift political disputes from legislatures to the judiciary. These

law enforcement official, I know crimes are caused by criminals, not by the gun industry. Indeed, by providing good-quality firearms at reasonable prices to law-abiding citizens and lawmen, the gun industry helps reduce crime. The way to disarm criminals is to enforce laws that prohibit felons from purchasing firearms and to enhance penalties for gun crimes.

For two years, I resisted intense pressure to join the tobacco litigation. A few weeks ago, I reluctantly took the steps to ensure that my state would receive its proportional share of the national tobacco settlement.

Fortunately, trial lawyers, who sought to unseat me last Novem-



kinds of suits confuse citizens about the tenets of American government, such as the separation of powers. It is frightening to read the mayor of Miami assert, "This is exactly what the courts are there to do, to fix inequities that you can't accomplish in the Legislature." This is wrong. The courts should apply the existing law to resolve legal disputes.

The rule of law, with its historic respect for freedom of contract, is also undermined by this emerging legal regime. The makers of the legal but dangerous products can be hauled into court and ordered to pay huge sums in a legal environment they never envisioned when they calculated the risks of manufacturing that product. The mayors claim they are acting to fight crime, but they are playing a blame game. They are unwilling to take responsibility for the crime problems. The

ber, will not share in the revenues to be paid to my state.

As a survivor of the tobacco wars, I pray that the gun industry (and then the alcohol industry, the fast-food industry, etc.) will prove to be tougher opponents of the trial lawyers and their political allies than Big Tobacco was.

The free market and the cause of human liberty cannot survive much more of this litigation madness.

*Bill Pryor is attorney general of Alabama.*

A-11 1/13/99

Today in *The Atlanta Journal*

1-11



George F. Will

# Handguns and Hired Guns

Washington  
Post  
1/24/99

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

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

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

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

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

saying it is difficult precisely to ascertain the supposed costs of gun use.

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

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

What about the welfare of children, which is today's reason of first resort for advocates of government action? Considering that bicycles, space heaters, swimming pools and cigarette lighters each kill more children under 15 than are killed annually by gun accidents (200 in 1996), most of the approximately 80 million Americans who own 200 million to 240 million guns must be quite careful.

Some supporters of the gun suits hope to bankrupt, by litigation costs, gun manufacturers—makers of a legal product which only 16 percent of Americans favor banning. Thus the suits are weapons of those of anti-democrats who pursue social change by judicial fiat (litigation) rather

than persuasion (legislation).

The suits are extensions of the brazen cynicism of the tobacco suits, which have successfully asserted, falsely, that cigarette smoking costs government money. (Not only are cigarettes the world's most heavily taxed consumer good, governments also profit from smoking by the early deaths of smokers who do not collect medical and pension entitlements.)

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

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

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

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## Keep Guns out of Lawyers' Hands.

By JOHN R. LOTT JR.

The state attorneys general and trial lawyers behind the temporarily derailed \$516 billion tobacco settlement have opened up a Pandora's Box of legal tricks. Long after the tobacco matter is in the past, these maneuvers could continue to be used against other unwitting industries that have nothing to do with cigarettes.

Much like states led the charge on tobacco, cities are spearheading the assault on the next target for a huge, amorphous product-liability suit—firearms companies. Chicago and Philadelphia are already threatening to sue gun makers. "The key is to get a lawsuit whereby the manufacturer is held liable, just like the smoking industry is held liable," said Chicago Mayor Richard Daley. Philadelphia Mayor Edward Rendell wants gun manufacturers to reimburse the city for all of its health-care expenses, and police salaries that arise from gun violence.

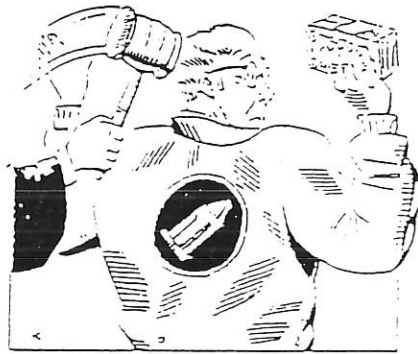
These are not the only lawsuits facing gun makers. Last week the MacArthur Justice Center at the University of Chicago filed a suit accusing gun companies of knowingly aiding criminals in the commission of crimes. The case, filed on behalf of the estates of three dead people, claims that the gun companies "specifically geared" their weapons to make them attractive to gang members. Among the offending characteristics listed are low price, easy concealability, corrosion resistance and high firepower. The fact that an industry is being sued for making affordable products shows how far the liability-litigation madness has gone.

As in the tobacco cases, the antigun plaintiffs acknowledge only the costs and not the benefits of the products. However, the case against gun manufacturers will be harder to make. The states' class-action suits against tobacco emphasized what the tobacco companies knew about their products, not whether smokers themselves knew the risks of smoking. The plaintiffs are essentially accusing the tobacco companies of fraud—not fully revealing the deadliness of their product. This strategy wouldn't work against the gun makers since everyone knows that guns can kill.

Tobacco companies had a response to the states' claim that smoking cost taxpayers Medicaid money to pay for tobacco-

related illnesses. When smokers get sick, they tend to die relatively quickly. While states must bear these health-care costs sooner, since smokers die younger than nonsmokers, the expenses are offset by shorter illnesses—indeed, by smokers' shorter lives. And once the long-term savings to state pension programs are taken into account, smoking actually saves states money.

Tobacco companies were never comfortable with this morbid argument and judges weren't sympathetic to it. This permitted the state attorneys general to make



Martin Kozlowski

fantastical accounting arguments in which they cited the costs, but not the benefits, of smoking to state coffers.

But simply claiming that murders are committed with guns would not be enough for the cities to win. Unlike tobacco companies, gun makers also have powerful arguments about the benefits of gun ownership. Criminals tend to attack victims who they perceive as weak—and guns serve as an important deterrent against crime.

Americans use guns defensively about 2.5 million times a year, and 98% of the time merely brandishing the weapon is sufficient to stop an attack. Resistance with a gun is also the safest course of action when confronted by a criminal. For example, the chances of serious injury from an attack are 2.5 times greater for women offering no resistance than for those resisting with a gun. And guns help to bridge the strength differential between male criminals and their female victims, putting women on a more equal footing with men in terms of personal safety.

In my own recent research on gun own-

ership rates across states over time, I found that higher gun ownership rates are associated with lower crime rates. Further, poor people in the highest-crime areas benefit the most from gun ownership. Lawsuits against gun makers could raise the price of firearms, which would most severely reduce gun ownership among the law-abiding, much-victimized poor.

The cities' suits put Messrs. Daley and Rendell at odds with the wisdom of the very people whose job it is to keep the streets safe. The police cannot feasibly protect everybody all the time. Perhaps this is why police officers are sympathetic to law-abiding citizens owning guns. A 1996 survey of 15,000 chiefs of police and sheriffs conducted by the National Association of Chiefs of Police found that 33% of them thought law-abiding citizens should be able to purchase guns for self defense.

The cities would also face a credibility problem with their potential lawsuits: The towns themselves pay for police officers to carry guns. This makes it harder for them to deny that being armed has substantial benefits.

As for the MacArthur Justice Center, its charges represent the dangerous combination of counting costs but not benefits in legal arguments and of using courts to make public policy. Lightweight, concealable guns may help criminals, but they also help protect law-abiding citizens in the 43 states that allow concealed handguns. States issuing the most carry permits have had the largest drops in violent crime. Criminals may value guns with firepower, but so do potential victims who want to stop an attacker.

Perhaps the next prey for the local government and trial lawyers will be automobile companies. After all, the state bears some health care costs from car accidents and has to pay highway patrolmen to clean up the crashes.

Every product has illegitimate uses. Once legitimate products get assailed because they have a well-known downside, it's hard to see where the process will stop.

Mr. Lott, a fellow at the University of Chicago Law School, is the author of "More Guns, Less Crime" (University of Chicago Press, 1998).

1-13

## State Scene

# Gunning for safety and industry

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By Bill Shipp

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Must someone always try to rain on a parade?

Gov.-to-be Roy Barnes' spin doctors worked overtime last week to let the public know that economic development -- keeping the boom booming -- will be a central mission of the new state administration.

Barnes announced a major initiative, The Yamacraw Mission, to draw more high-tech companies into the state.

The governor has said he will strive to solve metro Atlanta's air-pollution problem so the economic expansion of the region can continue.

He has met with representatives of Alabama and Florida to work out a compromise on the use of river basins shared by our three states, all in the name of letting the good times roll.

A week before he officially took office, Barnes asked the Legislature to allocate additional millions for expansion of the World Congress Center to bring more big conventions to Atlanta and Georgia.

His speech-writers are busy weaving economic-development

themes through his first official orations.

Barnes sees himself as Georgia's No. 1 salesman -- a latter-day George Busbee bent on bringing new industries, tourist attractions and conventions to the state.

He just can't talk enough about keeping Georgia's economic lantern burning brightly.

But, suddenly last week, Atlanta Mayor Bill Campoeil left Gov.-elect Barnes speechless.

Just as the firearms industry's largest trade show planned to alight in Atlanta with nearly 35,000 visitors, Mayor Campbell announced he intended to file a lawsuit against gun-makers. He contends gun-makers and gun-dealers are responsible for the high incidence of violent crimes on Atlanta's streets. Chicago and New Orleans have filed similar litigation.

Bobby Kahn, the new guy's usually garrulous chief of staff,

said crisply that his boss would have no comment on Campbell's lawsuit against the gun folks.

Perhaps Barnes' silence is understandable. Campbell was a belated supporter of Barnes' candidacy for governor. The National Rifle Association, the high-powered political arm of the gun business, endorsed Barnes earlier.

An executive of the Shot Show, the big convention that comes to Atlanta Feb. 1-4, was not so reticent as Barnes about discussing Campoeil's courthouse ploy.

"You can tell the mayor that his town can kiss \$150 million good-bye," said Robert Delfay, president of the National Shooting Sports Foundation. "We are not planning to come back."

State and city convention promoters had nearly persuaded Delfay to return to Atlanta with his convention in 2001, 2003 and 2007, when Campoeil disclosed his plans to litigate. The snooters' convention and its delegates

spend an estimated \$50 million in their host city.

The theory of the announced gun lawsuit is simple: If tobacco manufacturers can be held responsible for deaths caused by smoking, then gun manufacturers surely must be the cause of deaths by shooting.

Big tobacco coughed up billions to settle its litigation. The gun people might do the same. At least that's the city's hope. It would be like winning the lottery. Campoeil and the city would wake up one morning, and a whopping settlement check from the firearms industry would be waiting on the mayor's desk. Atlanta's tax problems would be solved. The cops could get their raise. Water-and-sewer bills might be reduced. Potholes might be filled. Non-Atlanta Georgians might quit pointing fingers and snickering at the capital's fiscal irresponsibility.

Dream on, Mayor Bill. Big Tobacco and Big Guns are not the same. If you're going to sue

See Bill Shipp, Page 3

PAGE 4, FORSYTH, MONROE COUNTY, GA. 31029 January 13, 1999

## Bill Shipp Continued from Page 4.

firearms manufacturers for shooting deaths, why not sue the auto industry for causing car crashes -- or even ski-mask manufacturers for facilitating bank robberies by masked bandits?

Besides, the General Assembly convenes Monday, and there's already talk of passing a state law to nullify Atlanta's legal standing in a court case against gunmakers.

In any event, the idea of the gun lawsuit is a little nuts. It also sounded a sour note, though perhaps not a major one, in the

prelude to what promises be a go-go state administration.

...  
*Bill Shipp is editor of Bill Shipp's Georgia, a weekly newsletter on government and business. He can be reached at P. O. Box 440755, Kennesaw, GA 30144 or by calling (770) 422-2543, e-mail: bshipp@bell-south.net, Web address: <http://www.billsnipp.com>.*

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# Chicago Tribune

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26 Section 1

Saturday, November 14, 1992

## Editorials

### Daley's unwise anti-gun gambit

Mayor Richard Daley was in extra-high dudgeon Thursday as he announced Chicago's novel legal assault against the firearms industry, an attempt to collect damages for costs incurred in dealing with gun violence. And in view of the carnage created through the use of handguns, the mayor's anger was understandable and justified.

Nevertheless, his lawsuit is wrongheaded and ill-advised. It represents an abuse of the tort liability system and a dangerous extension of the tactic—employed in similar lawsuits against the tobacco industry—of using potentially bankrupting lawsuits to force makers of legal but unpopular products to quit.

The Chicago suit, which follows closely on the filing of a similar action by the City of New Orleans, names as defendants 12 suburban gun shops, 22 gun manufacturers and four gun distributors. It accuses them of creating "a public nuisance," charging that they "knowingly design, market and distribute firearms in order to facilitate their illegal entry into and possession in Chicago, where they are illegal to possess and where they often are used in the commission of crimes." And

it seeks \$433 million in damages, an amount the city called "a conservative estimate" of costs incurred by agencies from the Police Department to the city's Law Department in dealing with gun-related violence.

You don't need to be a pacifist to believe that guns are a plague on this city and this nation. They take a fearsome toll—570 murdered with guns in Chicago alone last year.

But except for Chicago and a relatively few other jurisdictions, they are unquestionably legal to buy and sell within regulations imposed principally by the federal government. If you believe, as we do, that the harm done by handguns far outweighs the good, then the answer is to campaign for enactment of effective federal controls, the most useful kind.

But the Chicago lawsuit attempts to elevate good morality—not to sell guns to people you have reason to think are bad guys—to the level of a legal requirement that no legislature has seen fit to impose. And having done that, it seeks to use the courts and the public treasury to make the gun industry comply—or face bankruptcy.

First tobacco. Now guns. What industry's next?

1-15



## REVIEW & OUTLOOK

### Courtroom Cowboys

New Orleans is known for its pageantry, and this month's featured attraction doesn't disappoint. In what looks to be the next big shame-shame parade, New Orleans Mayor Marc Morial trotted out a product liability suit against the gun industry. Lawyers and politicians are launching their next money grab masquerading as the solution to a "social problem."

Wendell Gauthier and John Coale, not seen at work in the great tobacco Cooper, are leading the charge for the local lawyers. In place of the state attorneys general who were their allies last time, now it's big city mayors who are looking for someone to blame for inner-city violence and, conveniently, to fill their collection plates. In addition to Mayor Morial in New Orleans, Ed Rendell of Philadelphia and Richard Daley of Chicago are hatching their own schemes. Others are likely to follow.

Legally, the New Orleans case hardly seems strong—as if mounting a serious legal argument were really the point. In essence, the city blames 15 gunmakers and distributors for failing to make guns "smarter."

No, this isn't about weapons being manufactured stupidly. The argument is that gunmakers should have been using technology that would "personalize" their weapons, allowing the gun to shoot only for its owner. New Orleans is asking damages for city services spent on the victims of unintentional shootings and crimes and suicides committed with a gun by somebody other than its lawful owner. Never mind that effective versions of safe-gun technology have yet to come off the drawing board. A figure hasn't been named, but New Orleans is talking about collecting millions. And if this line doesn't work, the gunmakers face legal theory roulette: Chicago will argue that they are a "public nuisance" and owe the city \$433 million.

"Its going to be a very large war," chortles Mr. Coale, famous for descending on Bhopal in India to sign up grieving victims of the chemical plant accident there. Mayor Rendell of Philadelphia predicts the gun manufacturers will settle quickly because they don't have the "deep pockets" to defend themselves. Gee, where did he get that idea? Clearly the private

lawyers, acting on contingency, are hoping for another political bonfire of the tobacco sort. In their get-richer-quick dreams, the lawyers are hoping the gunmakers will be cowed into surrendering without the tort sharks ever having to argue, let alone prove, a case in court.

The mayors probably should have thought twice before letting their reputations be used as chum for this fishing expedition. Sure, in the tobacco cases states and their lawyer pals made off with a haul, but the crusade didn't play so well at the polls this month. All four of the politicians who trumpeted tobacco spoils were handed their heads by voters. Hubert Humphrey III, one of Minnesota's best-known politicians, was trounced for the governorship by a former pro wrestler.

And guns are not the political sitting duck that tobacco once seemed. Gun owners, unlike smokers, are not ashamed of their habit or shy about asserting their rights. The NRA unapologetically defends the interests of its unapologetic members—and does so by marshaling real votes at the ballot box, not just campaign contributions, however much it disturbs the gun-control folks to recognize that fact. Polls show 30% of citizens support gun-owner rights outside the major metropolitan areas. Those folks elect a lot of Senators.

Such calculations should put some spine in the gunmakers, who need not shrink from defending their legal rights out of fear that politicians will be able to rig the jury against them. We hope the lesson of the cigarette wars has been taken to heart. Big tobacco had a strong case against the state Medicaid suits, but tried instead to spin its way to peace. These efforts cost the industry a lot of money, brought no peace and served only to undermine the integrity of the legal system. America is genuinely divided by the gun question, just as it has been by the tobacco question. Trying to sidestep the democratic process and manipulate the courts to fleece an unpopular constituency is no solution to the crime and poverty problems of cities like New Orleans. The mayors may be surprised to discover their lawsuits aren't much of a political winner either.

1-16



# CITY OF TOPEKA

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Joan Wagnon, Mayor  
215 S.E. 7th Street Room 352  
Topeka, Kansas 66603  
Phone 785-368-3895  
Fax Number 785-368-3850

## LEGISLATIVE TESTIMONY – HOUSE BILL 2540

**TO:** Chair Wagle and Members, House Federal and State Affairs Committee  
**FROM:** Jim Kaup, on behalf of the City of Topeka  
**RE:** **HB 2540; Preemption of City Authority to Commence Certain Civil Actions**  
**DATE:** March 3, 1999

The City of Topeka opposes HB 2540, a bill which would preempt the existing authority of cities to bring lawsuits on behalf of their citizens against parties involved in the firearms industry, except for certain actions premised upon breach of contract or warranty.

The City is aware of legal actions commenced by other municipalities, such as Chicago, where a municipality seeks reimbursement from the firearms industry for the public cost incurred in treating victims of shootings. Those lawsuits utilize theories of public nuisance and negligent marketing.

To the best of my knowledge, there has never been, and is not now, any consideration by the City to participate in such civil actions. The City ~~does not oppose HB 2540 because it anticipates using the legal authority which the bill would take away.~~ The City opposes HB 2540 because of the need to preserve existing city legal authority. The City opposes state preemption of the authority of locally-elected officials to pursue a particular course of legal action when such is believed necessary to protect the health, safety and welfare of our citizens.

It was only a few weeks ago this Committee, while considering HB 2240, heard the request of cities and counties for the legislature to preserve the status quo with respect to local government authority to regulate the carrying of concealed firearms. While HB 2540 has a significantly lesser impact upon local governments, the principle remains the same – local self-government requires having adequate authority to act in response to local needs and conditions.

Recognizing that the case for local self-government in the context of firearm regulation has been made, and lost, already this Session before this Committee, the City of Topeka will move on to make the following comments regarding some of the specifics of HB 2540:

-over-

*House Fed + State  
3-3-99  
Attachment #2*

1. The legislative finding set out in Section 1(a) of the bill simply states a conclusion, without stating the basis for it. What is the basis for the “finding” that marketing, sales, etc., of firearms is not an “unreasonably dangerous activity” and it is likewise not a “nuisance per se”?
2. Anytime the City of Topeka adopts an ordinance, it is a fundamental requirement that such a legislative action be rationally related to a legitimate governmental (public) purpose. The same requirement holds true for the Kansas Legislature. What is the “State’s interest” or valid public purpose behind giving this extraordinary blessing and protection to one industry? Is it to preserve and protect the Kansas economy? Are the number of businesses and jobs related to the firearms industry so great that legislation is necessary to ensure no successful attack on that industry would cripple the Kansas economy? Since this legislation proposes to take away existing legal authority of cities it is necessary to have the answer to that question of what is the State interest. This bill would set a precedent and it is essential to know what the State’s rationale is so cities, if nothing else, can anticipate where the next State preemption might occur.
3. HB 2540 expressly and directly removes local governments as potential plaintiffs in certain lawsuits relating to the firearms industry. It seems to also effectively eliminate the State as a potential plaintiff as well. It is inconceivable that the State could be a party to litigation against the industry based upon claims of negligent marketing or public nuisance given the finding set out in Section 1(a). By the process of elimination this would leave only private parties capable of such actions against the firearms industry. In order to clarify that HB 2540 is not intended to take away the existing rights of individual Kansans to commence civil lawsuits, the following amendment should be considered:

“This Section shall not affect the right of individual citizens to bring actions against corporations or other entities relating to the design, marketing, manufacture or sale of firearms or ammunition.”

**ACTION REQUESTED:** The City is not aware of any similar restriction upon a local government’s right to sue. We respectfully ask you not to pass HB 2540. However, if this is to be the first such limitation since statehood, we respectfully request the Legislature’s careful identification, and articulation, of the compelling State interest that justifies this preemption.

*Handwritten initials*



**League  
of Kansas  
Municipalities**

LEGAL DEPARTMENT · 300 S.W. 8TH TOPEKA, KS 66603 · TELEPHONE (785) 354-9565 · FAX (785) 354-4186

**LEGISLATIVE TESTIMONY**

**TO:** House Federal and State Affairs Committee

**FROM:** Don Moler, General Counsel

**RE:** Opposition to HB 2540

**DATE:** March 3, 1999

First I would like to thank the Committee for allowing the League to testify today in opposition to HB 2540. One of the fundamental powers of cities, found in the very first statute which sets out the corporate powers of cities, K.S.A. 12-101 *First*, is the power of cities to sue and be sued. This is a fundamental aspect of the corporate powers of the 628 cities in Kansas and modification of this power should not be undertaken lightly.

HB 2540 identifies a specific group of manufacturers, trade associations and dealers and prohibits lawsuits brought by cities in Kansas on behalf of their citizens and taxpayers, against these manufacturers, trade associations and dealers. We would suggest this is a dangerous road to start down. We would suspect that if this legislation is successful this year, some other group will approach the legislature in the near future asking for the same consideration. Essentially removing the possibility that a city, county or other municipality might bring a lawsuit against them.

We are unaware of any city in Kansas currently contemplating such a lawsuit. However, to set a precedent prohibiting lawsuits in this area as a matter of state statute appears to us to be extreme and unwise public policy. We would strongly urge the committee to reject HB 2540 as a matter of sound public policy.

Once again I would like to thank the Committee for the opportunity to appear before you today and offer testimony regarding HB 2540.

House Fed + State  
3-3-99  
Attachment #3



Statement before the Kansas House Federal and State Affairs Committee  
in support of HB 2540, March 3, 1999

**Scott G. Hattrup** (*Univ. of Kansas: B.G.S., 1989; J.D., 1995*) is an attorney practicing in Overland Park, Kansas. He co-authored *A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts*, which appeared in the *Temple Law Review*, volume 68, page 1177, in the fall of 1995. This article was reprinted in volume 8, fall 1996, of the *Journal on Firearms and Public Policy*, an annual review of important articles on firearms published by the Second Amendment Foundation. Mr. Hattrup has testified before the Kansas House Federal and State Affairs Committee during the 1995, 1996, 1997 and 1998 legislative sessions. He was elected Chairman of the Kansas Sportsmen's Alliance in 1998. He is a certified firearms instructor and competitive shooter.

Most of you know that I am an attorney. Most people would take my chosen profession, plus the fact that I usually represent the "little guy," or individual plaintiffs, and rarely corporate defendants, and assume that I would oppose this type of bill because of the potential for cutting my own income. Those people could not be more wrong. HB 2540 in its current form protects manufacturers, dealers, and sellers from frivolous lawsuits, and I therefore **support** it.

Several years ago, people began suing tobacco manufacturers on the theory that the availability of cigarettes and the like caused otherwise reasonable people to begin smoking, adversely affecting their health, and causing premature death. These lawsuits were uniformly rejected by the courts. That is until the federal and several state governments, including our own, began suing these same tobacco manufacturers to recover health care costs caused in some part by years of tobacco use. The tobacco manufacturers either found the cases less frivolous than I did, or they finally gave up in the face of litigation against taxpayer-funded plaintiffs. The manufacturers settled for payment of damages in excess of \$200 billion over the next twenty-five years. Of that settlement, several law firms split the largest fee award in history, again in the multiple billion dollar range. Some of the same law firms who sued the tobacco firms have now set their sights on firearms manufacturers, and they are now well-funded for the battle.

When the first tobacco suits were filed, few observers considered them to pose serious threats to the industry. That miscalculation should not recur with these firearms lawsuits. Just because no city or county in Kansas has publicly announced that it intends to follow Chicago, New Orleans, Atlanta, Bridgeport, Connecticut, Miami, Philadelphia, Los Angeles, or Baltimore, all of which have filed or publicly announced they are considering filing lawsuits, does not mean that Kansas can take a wait-and-see attitude towards preventing their occurrence here.

There are two main problems with allowing cities to sue the manufacturers of otherwise legal products. The first problem is that lawsuits such as these bypass the legislative process and allow the court system, or possibly twelve random citizens, to set public policy for a city, state, region, or an entire country. That policy will not always agree with the laws set in the various legislatures. The second problem is that lawsuits like these are inherently anti-business.

In the February 16, 1999, issue of the *Wall Street Journal*, a story appeared describing the result in a firearms case that ended early last month in Brooklyn. Eleven jurors decided amongst themselves to ignore most of the evidence presented, adopted their own formula to determine whether damages would be assessed, and then proceeded to award damages based on a percentage split against certain manufacturers, but not others. Endemic to their discussion was

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the fact that the jury was spending someone else's money. This is not the type of open, public discussion that should take place during the legislative process.

The Mayor of Miami-Dade County, Florida was even quoted in a recent issue of the New York Times asserting, "This [firearms lawsuits] is exactly what the courts are there to do, to fix inequities that you can't accomplish in the legislature." Esteemed committee members, the Mayor of Miami is plain wrong. The Legislature is where we debate and decide policy issues, not the courts. If he doesn't like it, tough cookies. If HB 2540 does not pass, Kansas runs the risk of being drawn into the morass of judicially-imposed public policy over and over again.

Some of the businesses in Kansas which would be directly affected by a firearms lawsuit here include Wichita Arms, a manufacturer of highly accurate target pistols and rifles, CZ-USA, a distributor in Kansas City, Kansas, for Czechoslovakian firearms manufactured since before World War II, and Hodgdon Powder Company, a distributor for smokeless and black powder for reloading, supplier of explosive bolts to the space shuttle program, and employer of several people in Johnson County and Herrington, Kansas. These are all small businesses, employing your constituents and neighbors, generating taxes for the state selling lawful products.

Other business which could be affected if this trend in frivolous litigation is not stopped include beef packing plants and dairies being sued for causing heart disease, General Motors and Ford, which manufacture cars in or near Kansas, and which could be sued for causing drunk driving or traffic accidents, and the entire airplane industry in Wichita, which went through quite a downturn and cut back the manufacture of new light planes until a 10-year federal statute of repose was passed.

I urge your support for HB 2540. When you vote on this bill, please remember the many employers and businesses in Kansas that are now under threat of frivolous lawsuits. Remember too that the announced goal of those bringing the suits is to accomplish something in the courts that they have not been able to get through the legislative process. A vote in favor of HB 2540 will protect business and our constitutional legislative process.

Phillip B. Journey  
President Kansas Second Amendment Society (PAC)  
Director at Large Kansas State Rifle Assoc.

Testimony in support of HB 2540  
An Act concerning firearms and firearms dealers; relating to the limitation  
on certain civil actions

HB 2540 is a bill that is sweeping the nation's state legislatures, in Georgia and South Dakota it has already been enacted and is close to enactment in Oklahoma and other states. The legislation is a reaction to the lawsuits filed by cities such as Chicago and Atlanta. The lawsuits filed by these cities attempt to make firearms manufactures financially liable for the acts of criminals based in part on the theory that manufacturers, distributors and dealers negligently market their products or create a public nuisance. These lawsuits are an attempt by lawyers to copy the financial success of the tobacco suits. Unlike tobacco there is a constitutionally protected right to keep and bear arms. The transparent goal of taking a large number of weak cases to court simultaneously is not to win verdicts, but to bankrupt the industry by inflicting massive legal expenses upon them.

Firearms manufactures, distributors and dealers have strong arguments for the substantial benefits their products offer their customers, guns are used three times more often to protect against crime than they are to commit crime. I would be surprised to hear where a cigarette saved someone's life. The Chicago Tribune wrote in a recent editorial "the Chicago lawsuit attempts to elevate good morality...not [to] sell guns to people you have reason to think are bad guys... to the level of a legal requirement that no legislation has seen fit to impose.... It seeks to use the courts and the public treasury to make the gun industry comply...or face bankruptcy." In real product liability suits injured plaintiffs sue manufactures of defective products and seek compensation for injuries caused by those defects. Defendants in such suits can assert the defense that the product was not defective and worked as intended. However the suits against the firearms industry are for products that properly yet tragically functioned as intended. Criminal or negligent use of correctly working products is not a cause of action against the manufacturer, distributor or retailer. "The mere fact that a product is capable of being misused to criminal ends does not render the product defective" *Armijo v. Ex Cam Inc.* 656 F.Supp771, 773 (D. N.M. 1987)

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These suits are merely attempts to end firearm ownership in this nation when the proponents of disarming the American people are unable to politically accomplish their goals through the legislature and lawyers seeking to enrich themselves at the expense of our liberty. This body sets public policy for the state and this bill stands for the proposition that, when criminals commit crimes, the criminal is to blame, not the store that complies with all federal, state and local laws. If marginally successful these suits could substantially increase the price of firearms across the board. This price increase will increase the costs to all of us including local and state governments. It will put the price of self defense further out of the reach of the poor who need the means to protect themselves, their families and their property the most.

Kansas and out of state hunters who come here spend 555 million dollars each year in Kansas. This consumer spending translates into 14,500 jobs, 255 million paid in wages, over 32 million in state revenue and 1.1 Billion in economic activity in the state annually according to the Congressional Sportsmen's Foundation. There are 437,000 Kansas sportsmen and women in the state, which is more than the combined population of the cities of Wichita and Topeka. They deserve to have their sport protected from these frivolous civil suits.

This bill does not prevent appropriate suits from being brought against those who sell defective products in breach of warranties by individuals or governmental entities. It does not prevent suits against those who negligently or intentionally sell firearms to persons who should not legally possess or purchase firearms. If these lawsuits succeed it will set a dangerous precedent that will establish legal theories that will be applied to other industries. Suits against car manufactures or liquor producers their distributors and retailers for the carnage caused by drunk drivers. Suits against the beef industry for heart disease. Suits against cutlery manufactures for the crime perpetrated with their products. The possibilities are endless. The organizations I am here representing today urge you to stop it here and now and to fast track this bill to the full House for approval as soon as possible. The KSRA and KSAS have thousands of members in the state.



My name is Robert Hodgdon. I am President of Hodgdon Powder Company, which has offices in Overland Park and a manufacturing plant in Herington, KS. We package and store products in our Shawnee facility, and do some processing and storage in the old ammunition facilities at Forbes Air Force Base in Topeka. We manufacture Pyrodex, a propellant for muzzleloading sportsmen, and produce smokeless powder primarily for sportsmen who reload their own ammunition. We sell to many ammunition manufacturers, including those as large as Remington Arms, and to one which manufactures specialty ammunition for the Navy Seals program. One of our products separates the bolts holding the liquid fuel tanks to the NASA shuttles. We hire from 55 to 100 people (depending on the season) who work in our three locations; have around a \$3.5 million payroll.

My testimony is prepared to inform the committee of the economic importance of the firearms and related industries to the State of Kansas, which could be grievously injured should these manufacturers be impaired or bankrupted by the massive legal costs incurred fighting newly-concocted legal theories in courts throughout the U.S.

The firearms industry goes far beyond only the manufacturers of firearms and ammunition, and those engaged in its commerce are employed in nearly every city and town in Kansas, as well as in many rural settings. The sportsmen who hunt, or are involved in sports shooting activities enjoy their sport, not just during a season, but around the calendar. They equip themselves not only with the necessary firearms and ammunition, but with specialized wearing apparel and accessories, raingear and boots, SUV's, a variety of off-road vehicles, optical gear, photographic equipment, game calls and devices, duffels and luggage, gun cases, cleaning equipment, and gun safes for storage, to name a few. Their interest in this sport carries over into facets which become hobbies of their own, requiring equipment such as reloading tools and components, chronographs, home gunsmithing items, woodworking equipment, taxidermy equipment and supplies, wild animal feeders, and animal care supplies, etc. Most sportsmen subscribe to outdoor specialty magazines, and have libraries of many volumes on a myriad of variants of hunting and shooting interests. Technology has not left the hunter behind; there are every imaginable type of cyber-hunting experiences available on computer programs to let the activist realistically practice off-season.

The dollars brought to rural communities during hunting seasons are often the backbone of their economy. Motel rooms filled, restaurants serving meals, gasoline being pumped, and supplies being replaced at the local gunshop or hardware store helps sustain economies, which otherwise may rely solely on the shifting fortunes of agriculture or animal husbandry. Fortune Magazine says, "there, merchants look to hunting season the way Macy's looks to Christmas: it can make or break the year."

Obviously, all of law enforcement in the State of Kansas and its municipalities depend on products produced by our industry, as do security companies and officers. Programs of the Kansas National Guard and armed forces stationed on Kansas bases revolve significantly around small arms manufactured by the firearms industry. In short, our citizens would be much less secure without a continuing flow of products, which are now threatened by lawsuits recently initiated by cities against the industry.

According to the National Shooting Sports Foundation, overall shooting sports related activity in the U.S. amounts to \$30.9 billion annually! This activity supports more than 986,000 jobs. This is less than 1 percent of all U.S. employment, but represents more people than are employed in Wyoming and West Virginia combined, and more people than work in cities such as Kansas City, San Francisco, Portland, Orlando, or Ft. Worth.

#### IN PERSPECTIVE

The following comparisons are provided to help put in perspective the economic significance of the sporting firearms and ammunition industries and related activities.

- In the few minutes it takes to review this report, the nation's hunters and shooters will generate enough economic activity to support eight jobs.
- Each day, the firearms and ammunition industry, and related hunting and shooting activities, generate enough economic activity to support 1,640 jobs.
- Hunting and shooting related industries employ more people than all Sears stores.
- The \$30.9 billion in economic activity generated by the hunting and shooting sports industries exceeds the annual sales of companies such as Coca-Cola, Anheuser Busch, McDonalds, Home Depot, Johnson & Johnson, Caterpillar Tractor, Goodyear Tire & Rubber, Hewlett Packard, RJR Nabisco and scores of other highly recognizable "Fortune 500" companies.
- The blockbuster movie Titanic grossed \$376 million in 9 weeks. The hunting and shooting sports generate that much in just 4 days.
- The entire motion picture industry gross revenue from theater admissions is about \$5 billion, annually-the firearms and ammunition industry and related activities generate that much in two months.
- More than 21 million Americans participated in shotgun, handgun and rifle target shooting activities in 1996. That's over three times as many people who played racquetball during the same period, more than twice as many as take part in water skiing, and is roughly the same number of people who played golf.
- Hunting and target shooting activity employ more people than Chrysler, Phillip Morris, United Parcel Service, and Ford combined.

Hunting and target shooting in Kansas accounts for some \$581 million in economic activity each year. Retail sales data calculated from the U.S. Bureau of Census and applied to U.S. Fish & Wildlife figures, shows the multiplier effect of economic impact on Kansas can total as much as \$1.1 billion. Firearms products and jobs annually directly donate to Kansas sales tax of \$16.7 million, and income tax of \$4.2 million. Sportsmen's license fees are \$15.2 million. The Federal Aid in Wildlife Restoration Trust Funds (an excise tax of 11% on firearms and ammunition imposed by the industry on themselves in the 1930's) generates an additional \$2.6 million per year to the Kansas Dept. of Wildlife and Parks; for a total direct tax contribution to the State coffers of \$38.7 million (not including taxes on ancillary activities).

A potent economic force in Kansas is the outdoor catalog sales industry. LL Bean, Orvis, Cabelas, Bass Pro, Dixie Gun Works, Navy Arms, and a host of others send hundreds of thousands of catalogs, and do untold millions of dollars of business here, providing Kansans with sportsmen's products.

In Missouri, the greatest tourist attraction is not the Arch in St. Louis, Silver Dollar City, Branson itself, the Lake of the Ozarks, or any other lake. It is the retail store and museum of Johnny Morris's Outdoor World Bass Pro in Springfield! This reflects the tremendous power of the outdoors and nature's pull on the sportsman.

Kansas has 263 federally licensed firearms dealers, some of which represent multiple locations. Perhaps the sporting goods department at Walmart (s) would be Kansas' greatest tourist attraction, especially right before and during our hunting season.

There were 178,203 hunters in Kansas in 1997, the last year for which we have figures. The National Sporting Goods Association, in their 1997 annual report, reported there were 174,000 target shooters in the state. This would indicate 14% of Kansans participate in a shooting sports event at least once a year.

## SUMMARY

We do not maintain that hunting, recreational shooting, or the purchase of firearms for personal or home protection are acceptable merely because they make a significant contribution to our national and local economies. These activities are an acceptable, responsible and desirable ingredient of our nation's heritage, and should be continued, because experience, statistical evidence and common sense tells us so. The economic impact of these activities must be considered when well-meaning, but less than fully informed individuals, suggest that America would be a better place without hunting, recreational shooting, or the right of self-protection.

Firearms manufacturing is one of this nation's oldest industries. The very concept of interchangeable, machine-made parts was pioneered by Eli Whitney at his gun factory in 1803. The U.S. firearms industry continues to set the worldwide standard for product excellence. Names like Winchester, Remington, Colt, and Smith & Wesson are inextricably linked with the growth of our nation and are known all over the world.

# AMERICA'S "UN-ENDANGERED" SPECIES ...it didn't just happen!

In recent years, there's been a lot written about "endangered species." So much so, that many people now think that much of our wildlife is in serious danger of extinction.

It isn't so. Many previously threatened species have today been restored to healthy and abundant numbers—thanks largely to the dedication and commitment of hunters and anglers.

As described inside, sportsmen were America's "First Environmentalists," leading the call to establish laws and taxes on hunting and fishing equipment that today provide most of the funding for wildlife and habitat restoration programs.

Fortunately, they weren't content to stop there and went on to form over 10,000 groups like Ducks Unlimited, The Rocky Mountain Elk Foundation and The National Wildlife Federation, which annually contribute hun-

dreds of millions of dollars and countless hours of hard work to conservation projects. And they have consistently served as the nation's "environmental conscience," lobbying for policies that responsibly conserve and protect wildlife and the habitat it needs to flourish.

The chart below shows just how successful we've been at helping many species of American wildlife. In addition to those listed below, other conservation success stories include the alligator, beaver, Florida panther, peregrine falcon, red cockaded woodpecker, sea otter, spotted owl and wood duck.

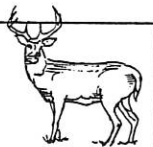
So, even if you don't enjoy hunting and fishing yourself, the fact remains that the cleaner streams, revitalized wetlands and thriving woodlands are there for all of us to enjoy. And we have hunters and anglers to thank for their commitment—even if you don't hear about it on the evening news.

## Here's What Hunters And Anglers Are Doing For Our Wildlife:

**THEN**  
**500,000**

In 1900, an official U.S. survey estimated that less than 500,000 **white-tailed deer** remained in the nation. Today, some 19 million whitetails roam our forests.

**NOW**  
**19,000,000**



**THEN**  
**1,110,000**

Habitat destruction reduced **Canada goose** populations to a low of some 1,110,000 in the late 1940s. Since then, the population has more than tripled.

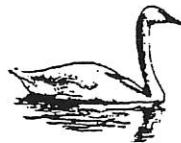
**NOW**  
**3,760,000**



**THEN**  
**73**

In 1935, only 73 **Trumpeter Swans** were left. Today, thriving populations total more than 16,000 in the U.S.

**NOW**  
**16,000**



**THEN**  
**41,000**

In 1907, only about 41,000 **elk** were counted in the U.S. Today, there are more than 800,000 and most western states have surplus populations.

**NOW MORE THAN**  
**800,000**



**THEN**  
**100,000**

By the early 1900s, encroaching civilization and habitat loss had reduced **wild turkey** populations to 100,000. Conservation programs have now restored the turkey to healthy numbers in almost all 50 states.

**NOW MORE THAN**  
**4,500,000**



**THEN**  
**12,000**

Almost 100 years ago, the total U.S. population of **prong-horn antelope** was about 12,000. Habitat restoration and restocking have helped to restore it to about 1 million.

**NOW ABOUT**  
**1,000,000**



6-4



House Bill 2540  
House Federal and State Affairs  
Wednesday, March 3, 1999

Testimony on behalf of the Kansas Trial Lawyers Association  
by Jerry R. Palmer, Attorney at Law

Madame Chair, Representative Klein and members of the Committee, thank you for the opportunity to speak to you today about House Bill 2540. My name is Jerry Palmer and I am the senior partner of the Topeka law firm Palmer, Lowry, Leatherman and White. I come before you today as a representative of the Kansas Trial Lawyers Association.

KTLA takes no position on what we believe is the actual intent of this bill. We do, however, want to raise questions about the necessity of including subsection (b) of Section 1, which might actually prevent legal gun owners injured by defective guns from filing a civil action against the gun manufacturer. We do not believe this was the intended outcome of this bill.

Attached to my testimony is a copy of the bill striking subsection (b) of Section 1. We respectfully request that the committee adopt an amendment to delete this section of the bill.

Thank you for your attention to our concerns.

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Attachment #7-1

## HOUSE BILL No. 2540

By Committee on Federal and State Affairs

2-26

9 AN ACT concerning firearms, ammunition and firearms dealers; relating  
10 to the limitation on certain civil actions relating thereto.

11

12 *As it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) The legislature finds that the lawful design, marketing,  
14 manufacture or sale of firearms or ammunition to the public is not an  
15 unreasonably dangerous activity and does not constitute a nuisance per  
16 se.

~~17 (b) To the extent the constitution of this state and the United States  
18 protects citizens' rights to keep and bear arms, the legislature finds and  
19 declares that it is within the strict prerogative of its own authority, and  
20 not the authority of any county or municipality, to determine whether  
21 any manufacturer, dealer or seller of firearms has engaged in any act or  
22 omission that would create a cognizable action for damages, injunction  
23 or otherwise.~~

24 Sec. 2. (a) The authority to bring suit and right to recover against  
25 any firearms or ammunition manufacturer, trade association or dealer, by  
26 or on behalf of the state or any political subdivision of the state for dam-  
27 ages, abatement or injunctive relief resulting from or relating to the lawful  
28 design, manufacture, marketing or sale of firearms or ammunition to the  
29 public shall be reserved exclusively to the state. This subsection shall not  
30 prohibit a political subdivision from bringing an action against a firearms  
31 or ammunition manufacturer or dealer for breach of contract or warranty  
32 as to firearms or ammunition purchased by such political subdivision.

33 (b) The provisions of this act shall apply to any action pending on or  
34 brought on or after the effective date of this act.

35 Sec. 3. This act shall take effect and be in force from and after its  
36 publication in the statute book.



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
11250 WAPLES MILL ROAD  
FAIRFAX, VIRGINIA 22030-7400

STATE & LOCAL AFFAIRS DIVISION  
JEFF FREEMAN, KANSAS STATE LIAISON

## MEMORANDUM IN SUPPORT

TO: Honorable Members of the House Federal and State Affairs Committee  
FR: Jeff Freeman, NRA-ILA Kansas State Liaison  
Nicole Palya, NRA-ILA  
RE: HB 2540  
Date: March 2, 1999

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On behalf of the more than 30,000 NRA members living in the State of Kansas, I respectfully urge you to support HB 2540, a proposal which would protect lawful manufacturers and sellers of firearms from the types of frivolous and financially-devastating lawsuits that have been leveled against the firearms industry in recent months.

These lawsuits are nothing more than a transparent attempt to achieve their legislative goals through the court system, to blame a lawful industry for cities' failed attempts to control crime and to bankrupt smaller manufacturers and dealers through litigation.

- **HB 2540** will ensure that city and county officials, like all other citizens of Kansas, must make laws by utilizing the legislature rather than the courts.
- **HB 2540** would not prevent individuals or groups of individuals from filing suit against ammunition or firearm manufacturers.
- **HB 2540** would not prevent cities or counties from filing suit for breach of contract or warranty.
- **HB 2540** would prevent law-abiding firearm and ammunition manufacturers from being held responsible for big-city mayors failure to prevent crime.
- **Every product** manufactured can be used improperly to achieve undesirable consequences. However, in any year, less than 1% of the firearms in America are used in violent crimes. In that same year firearms are used 2.5 million times in self-defense.

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Attachment #8*