

PHOTOCOPY
PRESERVATION

September 21, 1999

TO: Leanne

FR: Deanne

RE: Interstate Class Action Jurisdiction Act (HR 1875)

Chime -

Class Action

Per our discussion, I have pulled together various materials floating from gun groups and outlined a few ways in which the Interstate Class Action Jurisdiction Act (HR 1875) would impact the gun lawsuits:

STATUS

- (1) The bill is expected to come to the floor Wednesday.
- (2) Three amendments failed in House Judiciary Committee to exempt gun lawsuits, tobacco lawsuits and HMO lawsuits. The bill passed on nearly a straight partyline vote -- 15 to 12. Rep. Boucher was the only Democrat voting in favor of the bill.
- (3) The Judicial Conference opposes the bill.

BACKGROUND

- (1) Citizen lawsuits -- including class actions -- serve as the only safety "regulation" of the firearms industry. In fact, lawsuits are the only method to force manufacturers of defective firearms to make their guns safer. Moreover, litigation is now being used to target the gun industry's unscrupulous marketing and distribution practices.
- (2) The bill would make it easier for defendants in class action lawsuits (i.e. gun manufacturers, tobacco companies, HMO's) to file cases in federal courts by lowering the diversity threshold from complete diversity to minimal diversity. Since it is more difficult to get a class action lawsuit certified in federal court and accepted by a federal judge, the concern is that many of these cases would never be considered -- in fact NO tobacco class action lawsuit has ever been certified by a federal judge.

GUN LAWSUIT -- POTENTIAL IMPACT EXAMPLES

- (3) For example, Remington Arms settled a class action suit in 1995 for \$31.5 million. This suit involved 12 models of shotguns manufactured over a 35-year period. The plaintiff shotgun owners alleged that the guns' barrels were made from insufficiently strong steel and therefore prone to explode.

As part of the settlement, Remington agreed to upgrade the steel used in its shotguns and to distribute a Shotgun Safety Bulletin warning of the hazard of shotgun barrel explosion.

Since no federal safety agency has the authority to recall defective firearms, a lawsuit was the sole mechanism for such gun owners to seek redress.

- (4) Furthermore, lawsuits filed recently by cities and individuals seeking to hold the gun industry liable for its marketing and distribution practices often argue "untested" legal theories (i.e. Chicago's nuisance lawsuit). Federal courts are very reluctant to validate legal arguments that have not been heard and accepted by state courts, even if those arguments are entirely consistent with existing state law. Class action suits asserting such theories are likely to be filed in the very near future. If they were forced into federal court, such suits would almost certainly be doomed to failure because of the reluctance of federal courts to embrace legal theories not formally recognized by state courts.