

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE  
TOWNSHIP OF ADDISON,

Plaintiff/Appellee,

v

JERRY CLINE BARNHART,

Defendant/Appellant.

Supreme Court  
Docket No. 145144

Court of Appeals  
Docket No. 301294

Oakland County Circuit Court  
Case No. 2009-DA8918-AV  
Hon. Leo Bowman

52-3 Judicial District Court  
Case No. 05-010900-OM  
Hon. Julie A. Nicholson

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THE MICHIGAN UNITED CONSERVATION CLUBS'  
MOTION TO FILE *AMICUS CURIAE* BRIEF  
IN SUPPORT OF JERRY CLINE BARNHART'S  
APPLICATION FOR LEAVE TO APPEAL

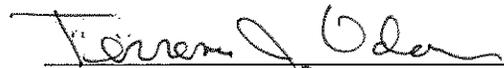
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JUL 20 2012

CORBIN B. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

The Michigan United Conservation Clubs ("MUCC") moves for permission to file the *amicus curiae* brief attached as Exhibit 1. The MUCC is an organization that represents numerous conservation clubs in the State of Michigan that will be directly impacted by the Court of Appeals opinion for which Appellant Jerry Cline Barnhart seeks leave to appeal. Specifically, many shooting ranges operated by MUCC members will be deprived of the protections given by the Sport Shooting Range Act ("SSRA") if, as the Court of Appeals held, the SSRA is inapplicable to any shooting range for which there is any evidence to support that it is operated for a business or commercial purpose.

WHEREFORE, the MUCC seeks an order permitting it to file the *Amicus Curiae* Brief attached as Exhibit 1.

  
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Dated: July 19, 2012

# **EXHIBIT 1**

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**AMICUS CURIAE MICHIGAN UNITED CONSERVATION CLUBS' BRIEF  
IN SUPPORT OF JERRY CLINE BARNHART'S  
APPLICATION FOR LEAVE TO APPEAL**

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## I. INTEREST OF *AMICUS CURIAE*

The Michigan United Conservation Clubs (“MUCC”) is the largest statewide conservation organization in the United States. For over 75 years it has been the “watch dog” over the conservation of Michigan’s natural resources and its outdoor heritage. MUCC has over forty thousand individual members in Michigan and hundreds of affiliated outdoor sports clubs. MUCC’s primary purpose and goal is to provide Michigan’s “outdoor community” a vehicle through which to take a cohesive and unified stance on issues that matter most to that community of interests, and to bring diverse groups, organizations and individuals together on issues of importance.

One such issue is guaranteeing and preserving shooting rights and opportunities to MUCC’s tens of thousands of individual members and its hundreds of organizations. Over half of MUCC’s club members operate recreational sport shooting ranges that charge user fees, provide shooting instruction, and administer firearm safety courses. In fact, MUCC affiliated clubs account for nearly one quarter of the total number of sport shooting ranges in Michigan. One of the most important - - if not *the* most important - - tools in that endeavor is the Michigan Sport Shooting Ranges Act (“SSRA”) which provides MUCC members’ ranges and clubs with immunity from suit and local regulation that threaten their existence and continued operation.

By excluding application of the SSRA to any shooting range where there is any basis to suggest that it is operating for any business or commercial purpose, the Court of Appeals’ holding in *Township of Addison v. Barnhart* will deprive hundreds of MUCC’s sport shooting ranges, and the tens of thousands of individuals whom those ranges serve, of the protections that the SSRA was intended to give them.

For the reasons more fully set forth below, MUCC urges the Court to grant Defendant/Appellant Barnhart’s Application for Leave to Appeal and to reverse the lower court’s

decision that the SSRA is inapplicable to any range that does anything that could be construed as a “business or commercial purpose” such as requiring shooters to pay or providing shooting training or lessons for a fee.

## II. STATEMENT OF QUESTION PRESENTED

Should the Court grant Defendant-Appellant Jerry Cline Barnhart’s Application for Leave to Appeal the lower court’s decision barring the application of the Sport Shooting Ranges Act (“SSRA”) to shooting ranges that operate for a business or commercial purpose, where (1) the vast majority of sport shooting ranges in Michigan operate for some business purpose, such as charging users or providing safety and firearms training, and (2) there is significant and widespread interest in making the SSRA’s protections applicable to all sport shooting ranges, including those operated as businesses, as the Michigan Legislature intended?

## III. STATEMENT OF FACTS

*Amicus curiae* MUCC adopts and incorporates by reference the Statement of Facts in Defendant/Appellant Jerry Cline Barnhart’s May 22, 2012 Application for Leave to Appeal.

## IV. ARGUMENT

### A. **There is Significant Public Interest in Having the SSRA Apply to All Ranges, Regardless of Whether They Operate for Business or Commercial Purposes.**

“Sport target shooting is one of America’s most popular” outdoor activities.<sup>1</sup> It is “estimated that more than 21 million Americans take part in some type of target shooting (sporting clays, high power, small bore, silhouette),” which is “about the same number of people who play tennis each year.”<sup>2</sup> A simple internet search reveals over 100 sport shooting ranges in Michigan open to the public that provide trap, skeet, sporting clays, silhouette, pistol, rifle and

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<sup>1</sup> David G. Cotter, *Outdoor Sport Shooting Ranges: An Endangered Species Deserving of Protection*, 16 *TM Cooley L Rev* 163 (1993).

<sup>2</sup> 12 *Shooting Sports USA*, Jan 1999 at 3.

other kinds of shooting opportunities.<sup>3</sup> That does not include conservation and sportsmen's clubs that are not open to the general public, nor private ranges for personal use. A Michigan Department of Natural Resources study estimated in 2010 that there are approximately 400 shooting ranges throughout Michigan in 81 of its 83 counties.<sup>4</sup> Seventy percent of ranges charge range fees. An almost equal percentage (68%) of ranges provide shooting instruction.<sup>5</sup> One would no more expect to find a sport shooting range that does not charge users a fee than one would expect to find a golf course that does not charge a greens fee to play golf, or a ski resort that does not charge for a lift ticket. Likewise, a sport shooting range that does not offer shooting lessons for hire is as rare as a golf course or ski operation that does not provide instruction for a fee.

In short, sport shooting ranges are prevalent throughout Michigan, and the vast majority charge range fees or engage in some activity that might "suggest" they are operating for a business or commercial purpose. The lower court's holding states that shooting ranges that are operated for a business or commercial purpose cannot be considered a "sport" shooting range. In so doing, the lower court failed to consider the reality of how these ranges operate. The very language of the SSRA allows these ranges to restore and expand, and in order to do so, they must attain funds through membership dues or user fees. Since the vast majority of shooting ranges participate in some form of income generation, the lower court's ruling would strip the protections of the SSRA from a vast majority of shooting ranges – effectively abrogating the very purpose of the Act.

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<sup>3</sup> <http://www.muck-bay.com> (accessed April 30, 2012).

<sup>4</sup> Mary H. Benson, 2010 Michigan Shooting Range Survey Results, Michigan Department of Natural Resources & Environment, Education and Technology Division, December 2010.

<sup>5</sup> *Id* at 3.

**B. It is Imperative That the SSRA's Protections Remain Applicable to All Sport Shooting Ranges, Regardless of Whether They Are Operated for Business or Commercial Purposes.**

**1. The SSRA has been relied upon by numerous sport shooting ranges for the protections it provides.**

As "suburban sprawl continues, so does litigation involving shooting ranges."<sup>6</sup> In particular, "Michigan has experienced a significant number of lawsuits involving sport shooting ranges," and the "[a]doption of protective statutes" such as the SSRA "is intended to spare sport shooting ranges from the burdens of litigation."<sup>7</sup>

As one commentator has observed, "[a]fter years of litigation and shooting range closings, [the SSRA] has helped immensely in protecting shooting ranges and shooting sports from extinction."<sup>8</sup> A representative, but far from exhaustive, set of lawsuits illustrates how the SSRA has successfully protected and preserved shooting ranges from nuisance claims and local zoning regulation.

In *Jakubas v Kingsley Sportsmen's Club*, No. 93-10723-CZ (Grand Traverse Circuit Court, Jan. 18, 1993), the SSRA "kept the lawsuit from progressing beyond the preliminary stages" where the plaintiffs "sued the Kingsley club alleging both noise and safety nuisance."<sup>9</sup>

In *Klark v Ann Arbor Lodge No. 1253*, No. 143678 (Mich App, June 17, 1994), the plaintiff alleged that a skeet "range violated local zoning and noise ordinances," even though the "range had been in operation since 1958 and was not in violation of any ordinance when it was

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<sup>6</sup> Cotter, *supra* note 1 at 181.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 189.

<sup>9</sup> David G. Cotter, Shooting Sports Versus Suburban Sprawl: Is Peaceful Coexistence Possible? 15 TM Cooley L Rev 21 (1998).

constructed in then rural Dexter Township.”<sup>10</sup> The “trial court held that the range was protected under” the SSRA, and “dismissal was affirmed on appeal.”<sup>11</sup>

In *Haines v Lapeer County Sportsmen’s Club*, No. 183268 (Mich App, Aug. 9, 1996), the range “had its shooting activities severely limited by an injunction obtained by its neighbors in 1964,” but after the SSRA’s 1994 amendments “the Michigan Court of Appeals ordered the Lapeer County Circuit Court to dissolve the old injunction so the club could operate as contemplated by the legislature.”<sup>12</sup>

In *Green Oak Township v Michigan Shooting Centers, Inc.*, slip opinion 04-20782-CZ (Sept. 21, 2007, Livingston County Circuit Court) (Ex. A of Barnhart’s Reply Brief in Support of Application for Leave to Appeal), Green Oak Township and several residents sued the operator of the Island Lake Shooting Range, Michigan Shooting Centers, LLC (“MSC”), alleging noise nuisance. After a “labyrinthine path through the legal system – three judges, three trips to the Court of Appeals, a plethora of motions, parties entering and exiting, politicians commenting and condemning, then finally a trial --” the court held that “the nuisance claims of the Plaintiffs are all barred by the SSRA, MCL 691.1542,” and the “existence of the SSRA mandates the result of this case.” *Id* at 1-2.

MSC ran the shooting range as a for-profit business. In its first four years of operation, MSC’s “range ha[d] served over 143,000 sportsmen and patrons” and “generate[d] significant revenues.” *Id* at 40, ¶22(D).

In short, shooting ranges throughout Michigan have relied upon the SSRA’s protections in persevering shooting ranges from local control and litigation as the Legislature intended.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

*Barnhart* eliminates that protection by making the SSRA inapplicable to any shooting range for which there is any evidence to suggest that it operates for a business or commercial purpose.

**2. The SSRA's legislative history establishes the need for its broad protections**

Given the SSRA's unambiguous terms which make it applicable to business entities such as "partnerships, proprietorships, and corporations," the SSRA's legislative history is not particularly relevant in determining that the Court of Appeals erred in interpreting the SSRA to be inapplicable to ranges that are operated for any "business or commercial purposes." However, the SSRA's legislative history does illustrate the importance of the protections it was designed to provide shooting ranges, and demonstrates why it is important for this Court to grant leave and reverse the Court of Appeals' erroneous interpretation which makes the SSRA inapplicable to those ranges.

The SSRA, originally enacted in 1989, was modeled after the Right to Farm Act, MCL 286.471 *et seq.*, to protect shooting ranges from lawsuits and hostile local ordinances as population changes and urban sprawl brought new residents into conflict with existing ranges, much the same as conflicts developed between existing farms and new residents who opposed the smell, noise and other "nuisances" that farm operations caused. *Township of Ray v B&BS Gun Club*, 226 Mich App 724, 727; 575 NW2d 63, 65 (1997).

The House Legislative Analysis Section on House Bill No. 5056 described the problem sought to be addressed by the SSRA:

Within the past decade certain areas of the state, such as the Wayne County area, have experienced tremendous urban sprawl. . . . The recent encroachment of urban areas around sport shooting ranges has resulted in conflict between range users and residents living near the ranges who want to keep their neighborhoods quiet. Residents of some neighborhoods near sport shooting ranges have filed lawsuits against range owners, operators and users citing violations of noise laws in order to curtail range use.

\* \* \*

Prohibiting noise at a range is an effective way of putting many outdoor ranges out of business.

(Exhibit A).

Similarly, the Senate Fiscal Agency Bill Analysis on House Bill No. 5056 described the problem of increased litigation against shooting ranges and local ordinances designed to drive existing ranges out of business (Exhibit B).

The SSRA originally provided immunity to range owners, operators and users from criminal or civil liability based upon complaints of noise nuisance. Amendments in 1994 provided protection to ranges from any local ordinances or lawsuits if the range began operating before July 5, 1994 and if it complied with "generally accepted operation practices." Ranges that satisfy those criteria are exempt from local ordinances, and are allowed to increase or expand their membership, activities and events if doing so is authorized by generally accepted operation practices.

The House Legislative Analysis Section for Senate Bills Nos. 788 and 789, which became the 1994 Amendments to the SSRA, noted that "[d]espite the protections offered by the [Sport Shooting Ranges] act, . . . conflicts have continued, zoning boards have ruled against ranges, and circuit courts have rule variously, sometimes ruling in favor of ranges, sometimes in favor of zoning boards." (Exhibit C).

The 1994 Amendments sought to extend protections to shooting ranges and the valuable services they provide:

Shooting ranges and many private sportsmen's clubs that operate them provide important public services, as well as recreational opportunities. Shooting ranges are often the sites of gun and hunter safety courses and shooting instruction, and law enforcement training. As well as the site of individual practice sessions and organized competitions. Shooting ranges provide a

place to receive hands-on instruction in the safe and proper use of dangerous weapons, to adjust rifle sights, and to practice to improve safety and accuracy in firing weapons. However, encroaching development and new neighbors in many areas have led to conflicts between shooting ranges and their neighbors, conflicts through which longstanding operations are threatened, and reasonable uses could be curtailed.

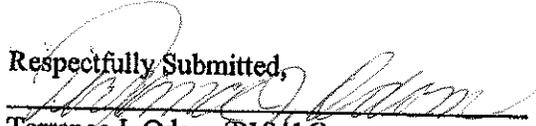
(Exhibit C).

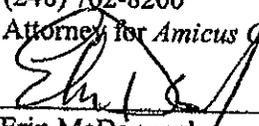
Thus, the Michigan Legislature enacted the 1994 Amendments to guarantee that ranges built before July 5, 1994 and which comply with generally accepted operation procedures would be free of lawsuits and local regulation that threatened their existence.

#### V. REQUEST FOR RELIEF

The lower court's opinions in this case almost completely defeat the protections that the Michigan Legislature sought to provide shooting ranges in the SSRA by rendering the SSRA inapplicable to the vast majority of shooting ranges in Michigan for which it can be said operate for some "business or commercial purpose," such as charging user fees, providing lessons for hire, or engage in similar activities. Given the significance of the protections that the SSRA gives these shooting ranges, and the significant number of users of such ranges, the MUCC urges this Court to grant Barnhart's Application for Leave to Appeal and reverse the lower court's rulings.

Respectfully Submitted,

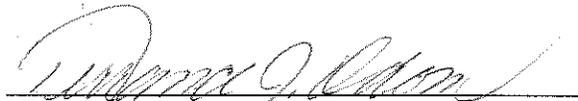
  
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Attorney for Amicus Curiae MUCC

  
Erin McDonough  
Executive Director  
MUCC

Dated: July 13, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2012 I served the foregoing paper on Robert Charles Davis, 10 S. Main Street, Suite 401, Mt. Clemens, MI 48043, and K. Scott Hamilton, 500 Woodward Avenue, Suite 4000, Detroit, MI 48226 through regular, first-class mail.



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DETROIT 51703-1 1249166v1

# EXHIBIT A



**House  
Legislative  
Analysis  
Section**

Manufacturer's Bank Building, 12th Floor  
Lansing, Michigan 48909  
Phone. 517/373-6466

**NOISE LAWS: EXEMPT SHOOTING CLUBS**

House Bill 5056 as enrolled  
Second Analysis (1-4-90)

Sponsor: Rep. Philip E. Hoffman  
House Committee: Tourism, Fisheries, & Wildlife  
Senate Committee: Judiciary

***THE APPARENT PROBLEM:***

Within the past decade certain areas of the state, such as the Wayne County area, have experienced tremendous urban sprawl. Urban sprawl can result in competition for resources between humans and animals, or humans and other humans, and can result in conflict between those groups as well. The recent encroachment of urban areas around sport shooting ranges has resulted in conflict between range users and residents living near the ranges who want to keep their neighborhoods quiet. Residents of some neighborhoods near sport shooting ranges have filed lawsuits against range owners, operators and users citing violations of noise laws in order to curtail range use. Many range users feel that this action is unfair since typically ranges have been in existence longer than the urban communities that are established near them and have operated without noise violation problems in the past. Legislation has been introduced to grant immunity from noise violation suits to range users and operators.

***THE CONTENT OF THE BILL:***

The bill would grant immunity from civil liability or criminal prosecution to a person who operated or used a sport shooting range in matters relating to noise resulting from the range as long as the range was in compliance with any noise control laws applied to the range at the time construction or operation of the range was approved. Under the bill, a person who operated or used a range could not be subject to an action for nuisance, nor could a court prohibit operation of a range, if the range was in compliance with noise control laws or ordinances applied to the range at the time construction or operation of the range was approved. Rules or regulations adopted by any state department or agency for limiting levels of noise would not apply to a sport shooting range exempted from liability under the bill. However, the bill would not prohibit a local governmental unit from regulating the location, use, operation, safety, and construction of a sport shooting range after the effective date of the bill.

***FISCAL IMPLICATIONS:***

According to the Department of Natural Resources (DNR) which operates seven sport shooting ranges, the bill would result in an indeterminate amount of savings from the department's avoidance of future nuisance and noise violation suits. (1-6-90)

***ARGUMENTS:***

***For:***

Currently, a sport shooting range may only be constructed and operated with the approval and authorization of the local unit of government with jurisdiction over the area in which the range is located. It is not fair to impose penalties upon users or operators of a range when they are engaged in normal patterns of use of a sport shooting range

approved by the local unit of government. In addition, sport shooting is a valid recreational activity, and there is a need for safe, monitored ranges where people can engage in this activity. Prohibiting noise at a range is an effective way of putting many outdoor ranges out of business. Further, ranges are used not only by sport shooters, but by police agencies and law enforcement divisions, including the Department of State Police. The bill will help ensure the peaceful enjoyment of sport shooting ranges by allowing people to use and operate ranges without fear of lawsuits. However, it will still maintain a local unit's regulatory authority over a range by specifying that local unit's could regulate all aspects of range use besides noise, including safety and operation of the range.

***Against:***

It seems as if many of the firearms currently in use are much larger and louder than weapons commonly in use during the past few years. In particular, many people voice concern about Uzi submachine guns and other automatic weapons. The bill would effectively prohibit townships from regulating the noise created by sport shooting ranges, and would severely limit the means that citizens have to address the situation.

***Response:*** In actuality, fully automatic weapons have been on the market since the 1930s, and the noises that are produced from them are similar to noises made by firearms currently available. In addition, oftentimes weapons such as the Uzi are of smaller caliber and quieter than conventional hunting firearms. Further, if a sport shooting range is used for purposes other than those approved by a local unit of government, the local unit of government could take appropriate measures to remedy the situation, such as regulating the hours of usage. However, the bill only addresses situations in which an individual is sued for using a sport shooting range for the purpose for which it was intended as approved by a local unit of government.

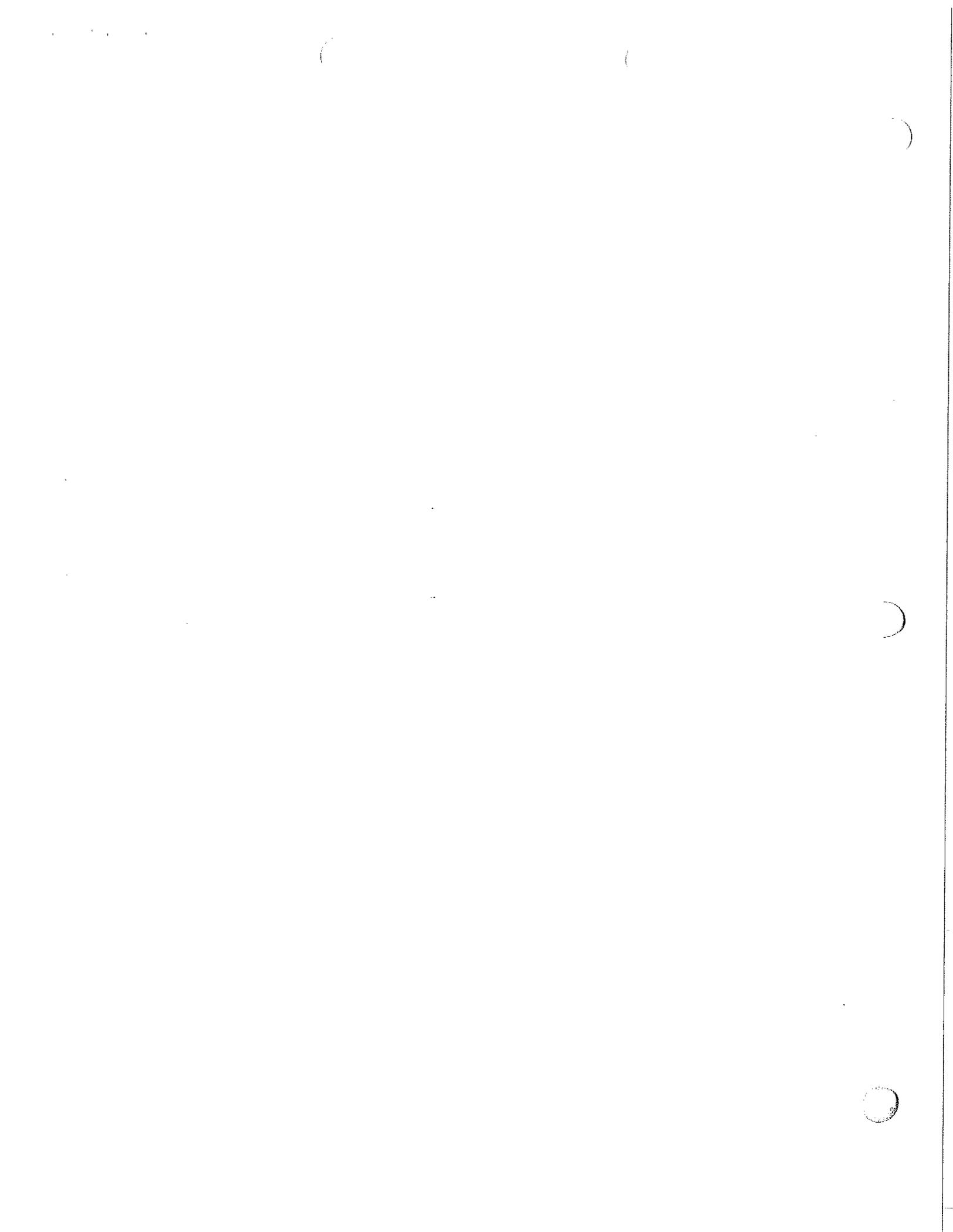
***Against:***

Although the majority of the outdoor sportshooting ranges were originally constructed in sparsely populated areas, several cities and suburban communities are growing at a rapid rate and sprawling into areas that were once uninhabited. The bill will help to limit growth by restricting local governmental regulation of the noise from outdoor sportshooting ranges. If local governments cannot limit noise from ranges, communities will not want to expand to areas that are near the ranges. In addition, the bill does not treat businesses equitably because it exempts outdoor sportshooting ranges from local ordinances concerning noise that are passed after the range has been constructed although other businesses are not exempt from ordinances passed after they have been constructed.

***Response:*** The Supreme Court ruling in Smith v. Western Wayne County Conservation Association asserts that there

H.B. 5056 (1-4-90)

is a standard of reasonableness that should be followed when dealing with noise pollution which is dependent upon the effect of the noise upon the ordinary, reasonable person. The logic of the ruling, as interpreted by the DNR, seems to assert that noise that was once considered fair continues to be fair if it is maintained at the decibel originally approved by the local unit. The bill provides reasonable protection to both the public and the range owners by requiring the range owners to maintain practices of the sport shooting range that do not deviate significantly from those practices originally approved by the local unit of government.



# EXHIBIT B


**SFA** BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

House Bill 5056 (Substitute H-1 as reported without amendment)  
 Sponsor: Representative Philip E. Hoffman  
 House Committee: Tourism, Fisheries, and Wildlife  
 Senate Committee: Judiciary

Date Completed: 12-4-89

### RATIONALE

Within the past decade or so, certain areas of the State have experienced tremendous urban growth. Reportedly, recent encroachment of urban areas around sport shooting ranges has resulted in conflict between range users and residents living near the ranges who wish to keep their neighborhoods quiet. Residents of some neighborhoods in close proximity to sport shooting ranges have filed lawsuits against range owners, operators, and users, citing violations of noise laws in order to curtail range use. Many range users feel that this action is unfair since ranges typically have been in existence longer than the urban communities that are established near them and the ranges have operated without noise violation problems in the past. Some feel that shooting ranges should be granted immunity from noise violation suits, as long as they do not violate noise laws that were in effect when their construction or operation was approved.

### CONTENT

The bill would create a new act to grant a person who operated or used a sport shooting range immunity from civil liability and criminal prosecution in matters relating to noise that resulted from the range as long as the range was in compliance with noise control laws applied to the range at the time its construction or operation was approved. Also, a person who operated or used a range would not be subject to an action for nuisance,

nor could a court prohibit operation of a range, if the range were in compliance with noise control laws or ordinances applied to the range at the time its construction or operation was approved. Rules or regulations adopted by any State department or agency for limiting levels of noise would not apply to a sport shooting range exempted from liability under the bill. The bill specifies, however, that it would not prohibit a local unit from regulating the location and operation of a sport shooting range after the bill's effective date.

### FISCAL IMPACT

According to the Department of Natural Resources, the bill could result in an indeterminate decrease in costs to the State as a result of the Department's avoidance of future nuisance and noise violation suits.

### ARGUMENTS

#### Supporting Argument

A sport shooting range may be constructed and operated only with the approval and authorization of the local unit of government that has jurisdiction over the area in which the range is to be located. It is only fair that ranges should have to comply with any noise laws in effect at the time of such approval. Requiring them to meet newer, stricter noise-control standards as the area develops, however, is unreasonable and unfair. Prohibiting noise that is simply a result of a

H.B. 5056 (12-4-89)

facilities' normal, approved use would effectively put many outdoor ranges out of business. Sport shooting ranges are used not only for recreation, but also for the training and practice of law enforcement personnel. The bill would help to ensure that the peaceful enjoyment of sport shooting, and the necessary training of police officers, could continue without the ongoing threat of noise violation lawsuits.

**Opposing Argument**

The bill would circumvent local control by prohibiting townships and other municipalities from regulating the noise created at sport shooting ranges and would limit severely the means that citizens have available to address the situation.

**Response:** The bill would not prevent regulation. If a sport shooting range is used for purposes other than those approved by a local unit of government, the local unit could take appropriate measure to enforce or stiffen regulations. The bill only addresses situations in which an individual is sued for operating or using a sport shooting range for its intended purpose.

Legislative Analyst: P. Affholter  
Fiscal Analyst: G. Cutler

**H8990\S5056A**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

# EXHIBIT C



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**PROTECT SHOOTING RANGES**

**Senate Bill 788 (Substitute H-2)  
Senate Bill 789 (Substitute H-1)  
Revised First Analysis (6-14-94)**

**Sponsor: Sen. Philip E. Hoffman  
Senate Committee: Natural Resources  
and Environmental Affairs  
House Committee: Conservation,  
Environment, and Great Lakes**

***THE APPARENT PROBLEM:***

Public Act 269 of 1989 was enacted to deal with problems arising from conflicts between shooting ranges and nearby property owners. The act gave ranges immunity from civil liability and criminal prosecution in matters relating to noise resulting from the range as long as the range was in compliance with local noise control laws at the time construction or operation of the range was approved. Despite the protections offered by the act, however, conflicts have continued, zoning boards have ruled against ranges, and circuit courts have ruled variously, sometimes ruling in favor of ranges, sometimes in favor of zoning boards. As yet there has been no appellate ruling with statewide application issued under the act. Amendments have been proposed to strengthen and clarify the protections of Public Act 269.

***THE CONTENT OF THE BILLS:***

Both bills would amend Public Act 269 of 1989, which offers shooting ranges protections from noise ordinances and nuisance suits, generally to expand protections provided by the act. Senate Bill 789 could not take effect unless Senate Bill 788 also was enacted.

Senate Bill 788 would amend Public Act 269 of 1989 (MCL 691.1541 et al.) to specify that a range that was not in violation of existing law when an ordinance took effect could continue to operate even if the operation did not conform to the new ordinance or an amendment to an existing ordinance. The bill also would allow a sport shooting range to remodel or replace existing buildings (within certain restrictions) and to expand its activities, despite being out of compliance with local ordinance, providing the range was in existence

when the bill took effect, the changes took place within the range's preexisting boundaries, and the range operated in compliance with generally accepted operation practices.

"Generally accepted operation practices" would be practices that were adopted by the Natural Resources Commission and established by a nationally recognized membership organization that provided voluntary firearm safety programs, and which were developed with consideration of all information reasonably available regarding the operation of shooting ranges. The commission would have to adopt generally accepted operation practices within 90 days after the bill took effect, and review them every five years, revising them as necessary.

The bill also would limit the application of existing protections against noise ordinances and nuisance suits (which apply to shooting range operations that conformed to applicable ordinances at the time of construction) to shooting ranges that complied with generally accepted operation practices.

Senate Bill 789 would add a new section (MCL 691.1544) specifying that each person participating in sport shooting at a range that conformed to accepted practices accepts the obvious and inherent risks associated with the sport. Those risks would include, but not be limited to, injuries resulting from noise, discharge of a projectile or shot, malfunction of sport shooting equipment not owned by the shooting range, natural variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, and other forms of natural growth or debris.

## **HOUSE COMMITTEE ACTION:**

The House committee substitute for Senate Bill 788 substantially revised the Senate-passed version, differing from it in details of definitions and scope. The House committee version of Senate Bill 789 differed from the Senate-passed version in addressing acceptance of risk by shooters, rather than immunity from civil liability for shooting ranges, and in its description of the risks involved.

## **FISCAL IMPLICATIONS:**

With regard to earlier versions of the bills, the Senate Fiscal Agency said that the bills would have no fiscal impact on state or local government. (12-7-93 and 12-15-93)

## **ARGUMENTS:**

### **For:**

Shooting ranges and many private sportsmen's clubs that operate them provide important public services, as well as recreational opportunities. Shooting ranges are often the sites of gun and hunter safety courses and shooting instruction, and law enforcement training, as well as the site of individual practice sessions and organized competitions. Shooting ranges provide a place to receive hands-on instruction in the safe and proper use of dangerous weapons, to adjust rifle sights, and to practice to improve safety and accuracy in firing weapons. However, encroaching development and new neighbors in many areas have led to conflicts between shooting ranges and their neighbors, conflicts through which longstanding operations are threatened, and reasonable uses could be curtailed. Senate Bill 788 would clearly state that shooting ranges that conformed to safe practices could operate and expand within existing boundaries notwithstanding any conflicts with local noise ordinances. A companion bill, Senate Bill 789, would ensure that people who engage in recreational shooting at a safely-constructed shooting range also shouldered the risks inherent in the sport.

### **Against:**

Senate Bill 788 would undermine principles of local planning and control over land use. Typically, a nonconforming use may not be expanded, and, once stopped, may not be resumed. By allowing expansions of activities at shooting ranges, the bill would be contrary to longstanding custom and

existing law, and further would attempt an unconstitutional amendment by reference of the applicable statutes on local zoning.

### **Against:**

Problems with some ranges have arisen when longstanding property owners objected to newly expanded operations--including late night hours--at the ranges. One range is even reported to have allowed national guard mortar practice. Thus, to describe the problem of one where new suburbanites are trying to interfere with long-term pre-existing uses is to some degree inaccurate. Local homeowners have rights, too, and those rights include being able to enjoy their homes without excessive noise or risk of stray bullets.

### **Response:**

The bills would offer protections only to shooting ranges that met proper safety standards; there should be no hazards to nearby residents.

## **POSITIONS:**

The National Rifle Association supports the bills. (6-8-94)

A representative of the Michigan United Conservation Clubs testified in support of the bills. (6-7-94)

A representative of the Department of Natural Resources testified in support of the bills. (6-7-94)

The Michigan Municipal League opposes Senate Bill 788, and would oppose any amendment that would allow nonconforming use, once halted, to resume. (6-8-94)

The Michigan Townships Association opposes Senate Bill 788, and supports the House substitute for Senate Bill 789. (6-7-94)



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**PROTECT SHOOTING RANGES**

**Senate Bill 788 (Substitute H-2)  
Senate Bill 789 (Substitute H-1)  
First Analysis (6-8-94)**

**Sponsor: Sen. Philip E. Hoffman  
Senate Committee: Natural Resources  
and Environmental Affairs  
House Committee: Conservation,  
Environment, and Great Lakes**

***THE APPARENT PROBLEM:***

Public Act 269 of 1989 was enacted to deal with problems arising from conflicts between shooting ranges and nearby property owners. The act gave ranges immunity from civil liability and criminal prosecution in matters relating to noise resulting from the range as long as the range was in compliance with local noise control laws at the time construction or operation of the range was approved. Despite the protections offered by the act, however, conflicts have continued, zoning boards have ruled against ranges, and circuit courts have ruled variously, sometimes ruling in favor of ranges, sometimes in favor of zoning boards. As yet there has been no appellate ruling with statewide application issued under the act. Amendments have been proposed to strengthen and clarify the protections of Public Act 269.

***THE CONTENT OF THE BILLS:***

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Senate Bill 788 would amend Public Act 269 of 1989 (MCL 691.1541 et al.) to specify that a range that was not in violation of existing law when an ordinance took effect could continue to operate even if the operation did not conform to the new ordinance or an amendment to an existing ordinance. The bill also would allow a sport shooting range to remodel or replace existing buildings (within certain restrictions) and to expand its activities, despite being out of compliance with local ordinance, providing the range was in existence

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Senate Bills 788 and 789 (6-8-94)

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