

STORAGE NAME: h1537.go
DATE: March 16, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1537
RELATING TO: Civil Actions/Firearms & Ammunition
SPONSOR(S): Representative Albright
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
 - (2) JUDICIARY
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill prohibits suits against firearm or ammunition manufacturers, distributors, or dealers or firearm trade associations on behalf of the state, its agencies and instrumentalities, counties, municipalities, special district or any other political subdivision or agency of the state. This bill prohibits suit or recovery by a political subdivision or agency of the state against firearm or ammunition manufacturers, distributors, or dealers or firearm trade association for damages, abatement, or injunctive relief arising out of or resulting from the lawful design, marketing, distribution or sale of firearms or ammunition.

This bill does not prohibit a natural person to sue firearm or ammunition manufacturers, distributors, or dealers or firearm trade association in any other capacity, suits for breach of contract or warranty for a firearm or ammunition purchased by a political subdivision of the state, or suits for injuries from a malfunction due to a defect in the design or manufacture.

This bill contains a number of findings of fact and legislative determinations including: the manufacture, distribution, or sale of firearms and ammunition by licensed manufacturers, distributors, or dealers is lawful and not unreasonably dangerous, the unlawful use of firearms and ammunition is the proximate cause of serious injuries arising out of such unlawful use, and the potential of a firearm or ammunition to cause serious injury, damage, or death as a result of normal function does not constitute a defective condition of the product.

This bill provides for recovery by the defendant for certain fees and costs if a civil action is brought in violation of this section.

This bill additionally declares that the manufacture, distribution, and sale of lawful products are lawful activities and are not unreasonably dangerous and that the potential of a lawful product to cause serious injury, damage, or death as a result of normal function, use, or consumption does not constitute a defective condition of the product. It prohibits the state or any political subdivision of the state from bringing a suit against a person arising out of the lawful design, marketing, distribution, or sale of lawful products to the public, but does not prohibit suits based on breach of contract or warranty of a product bought by a state or a political subdivision of the state or for injuries resulting from a malfunction in design or manufacture.

This bill takes effect upon becoming law and applies to any action pending on, or brought on or after, the effective date of this section.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government - This bill reduces the authority of a political subdivision to adjudicate disputes. This bill eliminates the authority of a political subdivision of the state to bring an action against a firearms or ammunition manufacturer, distributor, or dealer or firearm trade association on behalf of their constituents, except for actions for breach of contract, breach of warranty, or products liability arising out of firearms malfunctions due to defects in design or manufacturing.

Individual Freedom - This bill prohibits a presently lawful activity. This bill eliminates the authority of a political subdivision of the state to sue firearm or ammunition manufacturers, distributors or dealers or firearm trade associations on behalf of its constituents, which is currently lawful.

B. PRESENT SITUATION:

Local governments are political subdivisions of the state, and have only those rights and powers as provided by the legislature through general or special law. Art. VII ss. 1(a), (f), (g), 2(a) and (b), Fla. Const.

Section 790.33, F.S., expressly preempts local government regulation of firearms and ammunition in order to provide uniform firearms laws in the state.

C. EFFECT OF PROPOSED CHANGES:

This bill prohibits civil actions on behalf of the state, its agencies and instrumentalities, counties, municipalities, special district or any other political subdivision of the state against firearms or ammunition manufacturers, distributors, or dealers or firearm trade associations. The bill further prohibits a political subdivision of the state from suing or recovering damages, abatement, or injunctive relief from a firearms or ammunition manufacturer, distributor, or dealer or firearm trade association in a case arising out of or resulting from the lawful design, marketing, or sale of firearms or ammunition to the public. The bill does not prohibit a natural person from bringing suit against a firearms or ammunition manufacturer, distributor, or dealer or firearm trade association.

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The bill does not prohibit the following actions against firearm or ammunition manufacturers, distributors, or dealers:

- A breach of contract or warranty in connection with firearms or ammunition purchased by a political subdivision or agency of the state.
- Injuries resulting from firearm or ammunition malfunctions due to defects in design or manufacture.

The bill makes the following legislative findings and determinations:

- The manufacture, distribution, and sale of firearms and ammunition in Florida is a lawful activity and is not unreasonably dangerous.
- The unlawful use of firearms and ammunition is the proximate cause of injuries arising out of such unlawful use.
- The potential of a firearm or ammunition to cause serious injury, damage, or death as a result of normal function does not constitute a defective condition of the product.
- A firearm or ammunition may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when discharged legally or illegally.

This bill provides that a defendant is entitled to recover expenses resulting from a civil action brought in violation of this bill from the governmental entity bringing such action. This bill provides that a court may award all attorney's fees, costs and compensation for loss of income, and expenses incurred. This section does not apply to a pending action which is withdrawn within 30 days after the effective date of this section.

This bill additionally declares that the manufacture, distribution, and sale of lawful products are lawful activities and are not unreasonably dangerous.

In section two, this bill prohibits the right to sue any person, including a manufacturer, distributor, dealer, or trade association, on behalf of the state or its agencies, or on behalf of a political subdivision or agency of the state, for damages, abatement or injunctive relief resulting from the lawful design, marketing, distribution or sale of lawful products. This bill further prohibits any political subdivisions of the state from suing or recovering from any person for damages, abatement or injunctive relief arising out of or resulting from the lawful design, marketing, distribution, or sale of lawful products to the public.

This bill does not prohibit an action against any person for breach of contract or warranty concerning a product purchased by the state or any political subdivision or for injuries resulting from a malfunction due to a defect in design or manufacture.

This bill makes further legislative declarations that the potential of a lawful product to cause serious injury, damage, or death as a result of normal function, use, or consumption does not constitute a defective condition of the product nor can the product be deemed defective on this basis when used or consumed legally or illegally.

This bill takes effect upon becoming law and applies to any action pending on, or brought on or after, the effective date of this section.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 This bill creates s. 790.331, F.S., prohibiting civil actions on behalf of the state or other political subdivision against firearms or ammunition manufacturers, distributors, or dealers or firearm trade associations; providing actions for breach of contract or warranty or for injuries resulting from defects in the design or manufacture; providing legislative findings that the potential of firearms or

ammunition to cause serious injury, damage or death does not constitute a defective condition and that the manufacture, distribution, or sale of firearms and ammunition is a lawful activity and not unreasonably dangerous; providing for the award of expenses for actions brought in violation of this bill; and providing application to all actions pending on, or brought on or after, the effective date.

Section 2 Prohibiting civil actions on behalf of the state or other political subdivision against manufacturers, distributors, dealers or trade associations of any lawful products; retaining actions for breach of contract or warranty and for injuries resulting from defects in design or manufacture; providing finding that the potential of a lawful product to cause serious injury, damage or death does not constitute a defective condition; and providing an effective date upon becoming law.

Section 3 Providing an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By preventing certain lawsuits against firearms manufacturers and dealers who do business in the state, this bill would save an indeterminate amount in litigation expenses and protect their assets from liability. Through this reduction in litigation costs, the bill may foster increased firearms manufacturing and sales activity in Florida.

D. FISCAL COMMENTS:

N/A

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IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Amy K. Tuck

Jimmy O. Helms