

STORAGE NAME: h1537a.jud

DATE: April 12, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 1537

RELATING TO: Civil Actions/Firearms & Ammunition

SPONSOR(S): Committee on Governmental Operations and Representative Albright

TIED BILL(S):

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

- (1) GOVERNMENTAL OPERATIONS YEAS 3 NAYS 2
 - (2) JUDICIARY YEAS 8 NAYS 1
 - (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 districts, or any other political subdivision or agency of the state except under limited circumstances.

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 from suing firearm or ammunition manufacturers, distributors, or dealers or firearm trade associations in any other capacity.

The bill does not prohibit suits for breach of contract or for injuries resulting from the malfunction of a firearm or ammunition due to a defect in 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 takes effect upon becoming law and applies to any action pending on, or brought on or after, the effective date of this section. The bill is retroactive unless pending actions are dropped within 30 days of the effective date.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | N/A <input checked="" 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:

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. VIII ss. 1(a), (f), (g), 2(a) and (b), Fla. Const.

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

According to the National Rifle Association (NRA), more than two dozen cities, counties and the NAACP have filed suit against the firearms industry as a group for the law enforcement and public health expenses those localities say they incur from gun injuries and deaths. The NRA states that 14 states have enacted legislation to prevent such suits (Alaska, Arizona, Arkansas, Georgia, Louisiana, Maine, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Wyoming).¹

According to Handgun Control, Inc., 30 cities and counties have filed lawsuits to reform the gun industry. The Legal Action Project of the Center to Prevent Handgun Violence claims it represents most of these cities and counties and advises the others.² Some of the lawsuits have been dismissed (in Cincinnati, Ohio, and Bridgeport, Connecticut). Others are still pending.

In 1999, Miami-Dade County filed suit against various gun manufacturers for failing to have appropriate safety devices on gun. The plaintiffs alleged that various gun manufacturers promoted, marketed, and sold their products without the means to prevent the guns from being fired by unauthorized users, without adequate warnings to alert users to the risks of guns, and without using other available safety devices. The plaintiffs further alleged the gun manufacturers negligently designed guns that could be fired by unauthorized users,

¹ Source: "Junk Lawsuits' Against Gun Manufacturers" posted on the NRA website (<http://www.nraila.org>) on February 24, 2000.

² Source: <http://www.handguncontrol.org> accessed on April 8, 2000.

that failed to alert users that a round was in the chamber, and that could be fired when the magazine was removed.³ The complaint also alleged that warnings were inadequate.⁴ The lawsuit was dismissed by the circuit court. The circuit court found that the county did not have standing to bring suit.⁵ The court further found that the claims were completely preempted by section 790.33, Florida Statutes, and that the negligence and strict liability claims failed to state a cause of action.⁶ The appeal is pending in the Third District Court of Appeals and the appellant's initial brief is due May 19, 2000.⁷

Lawsuits against gun manufacturers have been dismissed in Florida in the past. In Coulson v. DeAngelo, 493 So. 2d 98 (Fla. 4th DCA 1986), the court rejected the claim that gun manufacturers can be held strictly liable for the use of their products. The court explained:

This concept has been consistently rejected. The essence of the doctrine of strict liability for a defective condition is that the product reaches the consumer with something "wrong" with it. In contrast the plaintiff alleged that it was the use of the gun that made it defective, not that it malfunctioned or had a faulty design.

Coulson, 493 So. 2d at 99.

In Trespalacios v. Valor Corporation of Florida, 486 So. 2d 649, 650 (Fla. 3d DCA 1986), the court also affirmed the dismissal of a lawsuit alleging negligence and strict liability against a gun manufacturer when a "mad gunman" killed seven people with a shotgun. The court held that there was no strict liability because the product was not defective. Id. The court also held that the manufacturer had no duty to prevent the sale of guns to persons who might use them to cause harm. Id. at 651.

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 except under specified circumstances. The bill 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 in any other capacity.

³ Source: Complaint in Penelas v. Arms Technology, Inc. et. al., filed in Miami-Dade County Circuit Court on January 27, 1999.

⁴ Id.

⁵ Penelas v. Arms Technology, Inc., Case No. 99-01941 CA-06 (Fla. 11th Circuit December 13, 1999).

⁶ Id.

⁷ Source: Third District Court of Appeals Clerk's Office, April 10, 2000.

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. The bill provides that a court shall 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 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:

See Section II.C. - Effect of Proposed Changes

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:

N/A

D. FISCAL COMMENTS:

N/A

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:

The bill will have the effect of ending pending lawsuits. Generally, substantive rights cannot be adversely affected by the enactment of legislation once those rights have vested. See Bitterman v. Bitterman, 714 So. 2d 356 (Fla. 1998). However, this bill does not affect lawsuits brought by individuals but only affects local government entities. Local government entities only have the rights set by general law. Art. VIII, s. 1(f), (g), Fla. Const.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill contains two paragraphs relating to recovery of expenses by defendants in civil actions. Paragraph 6(a) provides that the defendant may recover all expenses resulting from the action. Paragraph 6(b) provides that the court shall award all attorney's fees, costs, compensation for loss of income, and expenses. It is not clear why there are two paragraphs relating to the plaintiff's expenses. Statutes awarding attorney's fees can limit the award to "reasonable attorney's fees" and can specifically define "expenses." See e.g. s. 45.061(3)(a), F.S. (permitting the court to award as sanctions "[t]he amount of the parties' costs and expenses, including reasonable attorneys' fees, investigative expenses, expert witness fees, and other expenses which relate to the preparation for trial, incurred after the making of the offer of settlement"); s. 57.105(3), F.S. (permitting the court to sanction parties who file frivolous pleadings by awarding "damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay").

The bill does not prohibit a natural person from bringing suit against a firearms or ammunition manufacturer, distributor, or dealer or firearm trade association in any other capacity. It is not clear if the "natural person" language of the statute permits an individual or corporation to bring an action that the state could not file or if the "any other capacity" language means that actions by individuals are also prohibited.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 23, 2000, the Committee on Governmental Operations considered HB 1537 and reported it out favorably as a committee substitute. CS/HB 1537 removes "Section 2" of HB 1537 and thereby restricts the application of this bill to firearm or ammunition manufacturers, distributors, or dealers or firearm trade associations.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Amy K. Tuck

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

L. Michael Billmeier, J.D.

P.K. Jameson, J.D.