

BILL ANALYSIS

Senate Research Center

C.S.S.B. 766
By: Estes
Agriculture & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Over the past two decades, Texas has significantly liberalized its firearms laws to allow for citizens to better protect themselves by carrying concealed handguns. Over the same period of time, urban and suburban growth has encroached on many of the rural areas where shooting ranges are located. Often, the growing municipalities and their residents find these ranges undesirable and seek to regulate or litigate them out of existence. Some residents reportedly have gone so far as to fabricate evidence by scattering bullets over their yards in order to bring law suits against neighboring ranges. The legal pressure on ranges is creating a public safety issue, because it is causing ranges to shut down at the same time that more and more citizens are exercising their new right to carry a concealed handgun. Nobody can safely carry a concealed handgun without practice, so ranges need to be protected.

This bill prohibits municipalities and counties from regulating shooting ranges and increases the burden of proof that a private plaintiff must satisfy when suing a range. The goal of this bill is to protect safe ranges from legal harassment, not to shield unsafe ranges from being shut down. Under the bill, municipalities may still bring suit against a range that violates the law or that is not constructed according to industry safety standards. Similarly, nothing in the bill prohibits private citizens with clear and convincing evidence of guilt from suing for damages to private property, personal injury, or injunctive relief to enforce valid statutes, ordinances, or regulations.

C.S.S.B. 766 amends current law relating to the liability of a sport shooting range and the regulation of firearms, ammunition, firearm supplies, and sport shooting ranges.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 128, Civil Practice and Remedies Code, to read as follows:

CHAPTER 128. LIMITATION ON SUITS AGAINST SPORT SHOOTING RANGE
OR FIREARMS OR AMMUNITION MANUFACTURER,
TRADE ASSOCIATION, OR SELLER

SECTION 2. Amends Chapter 128, Civil Practice and Remedies Code, by designating Section 128.001 as Subchapter A, Chapter 128, Civil Practice and Remedies Code, and adding a heading to Subchapter A, to read as follows:

SUBCHAPTER A. SUIT BY GOVERNMENTAL UNIT

SECTION 3. Amends Section 128.001, Civil Practice and Remedies Code, by amending Subsections (a) and (b) and adding Subsection (f), as follows:

(a) Defines "governmental unit" and "sport shooting range" in this section. Makes nonsubstantive changes.

(b) Prohibits a governmental unit, except as provided by Subsections (c) and (f), from bringing suit against:

(1) a firearms or ammunition manufacturer, trade association, or seller for recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public; or

(2) a sport shooting range, the owners or operators of a sport shooting range, or the owners of real property on which a sport shooting range is operated, for the lawful discharge of firearms on the sport shooting range.

(f) Provides that nothing in this section shall prohibit a governmental unit from bringing an action against a sport shooting range, the owners or operators of a sport shooting range, or the owners of real property on which a sport shooting range is operating if the sport shooting range began operation after September 1, 2011, and operates exclusively within the governmental unit's geographical limits, exclusive of the governmental unit's extraterritorial jurisdiction:

(1) for injunctive relief to enforce a valid ordinance, statute, or regulation; or

(2) to require a sport shooting range to comply with generally accepted standards followed in the sport shooting range industry in this state at the time of the sport shooting range's construction.

SECTION 4. Amends Chapter 128, Civil Practice and Remedies Code, by adding Subchapter B, as follows:

SUBCHAPTER B. CIVIL ACTIONS

Sec. 128.051. DEFINITIONS. Defines "claim," "claimant," "expert," "expert report," and "sport shooting range" in this subchapter.

Sec. 128.052. LIMITATION ON CIVIL ACTION AND RECOVERY OF DAMAGES.

(a) Prohibits a civil action from being brought against a sport shooting range, the owner or operator of a sport shooting range, or the owner of the real property on which a sport shooting range is operated for recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful discharge of firearms, except as provided by Subsection (b).

(b) Provides that nothing in this section prohibits a civil action against a sport shooting range, the owner or operator of a sport shooting range, or the owner of the real property on which a sport shooting range is operated for recovery of damages for:

(1) breach of contract for use of the real property on which a sport shooting range is located;

(2) damage or harm to private property caused by the unlawful discharge of firearms on a sport shooting range;

(3) personal injury or death caused by the unlawful discharge of a firearm on a sport shooting range; or

(4) injunctive relief to enforce a valid ordinance, statute, or regulation.

(c) Authorizes damages to be awarded, or an injunction to be obtained, in a civil action brought under this section if the claimant shows by a preponderance of the evidence, through the testimony of one or more expert witnesses, that the sport

shooting range, the owner or operator of the sport shooting range, or the owner of real property on which the sport shooting range is operated, with wilful and wanton negligence, deviated from the standard of care that is reasonably expected of an ordinarily prudent sport shooting range, owner or operator of a sport shooting range, or owner of real property on which a sport shooting range is operated in the same or similar circumstances.

Sec. 128.053. EXPERT REPORT. (a) Requires a claimant, in a suit against a sport shooting range, an owner or operator of a sport shooting range, or the owner of real property on which a sport shooting range is operated, not later than the 90th day after the date the original petition was filed, to serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each defendant against whom a claim is asserted. Authorizes the date for serving the report to be extended by written agreement of the affected parties. Requires each defendant whose conduct is implicated in a report to file and serve any objection to the sufficiency of the report not later than the 21st day after the date the report is served or all objections are waived.

(b) Requires the court, if, as to a defendant, an expert report has not been served within the period specified by Subsection (a), to, on the motion of the affected defendant and subject to Subsection (c), enter an order that:

(1) awards to the affected defendant attorney's fees and costs of court incurred by the defendant; and

(2) dismisses the claim with prejudice with respect to the affected defendant.

(c) Authorizes the court, if an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, to grant one extension of not more than 30 days to the claimant in order to cure the deficiency. Provides that if the claimant does not receive notice of the court's ruling granting the extension until after the 90th day after the date the deadline has passed, then the 30-day extension runs from the date the plaintiff first receives the notice.

(d) Authorizes a claimant, notwithstanding any other provision of this section, to satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different defendants or regarding different issues arising from the conduct of a defendant, including issues of liability and causation. Provides that nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all defendants or with respect to both liability and causation issues for a defendant.

(e) Requires a court to grant a motion challenging the adequacy of an expert report only if it appears to the court, after a hearing, that the report does not represent an objective, good faith effort to comply with the requirements of an expert report.

(f) Stays all discovery until a claimant has served the expert report and curriculum vitae as required by Subsection (a), except that after a claim is filed all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (a).

SECTION 5. Amends Section 229.001, Local Government Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Prohibits a municipality, notwithstanding any other law, including Section 43.002 (Continuation of Land Use) of this code and Chapter 251 (Effect of Nuisance Actions and

Governmental Requirements on Preexisting Agricultural Operations), Agriculture Code, from adopting regulations relating to:

(1) the transfer, private ownership, keeping, transportation, licensing, or registration or firearms, ammunition, or firearm supplies; or

(2) the discharge of a firearm at a sport shooting range.

(b) Provides that Subsection (a) does not affect the authority a municipality has under another law to authorize certain requirements and regulations, including regulating the discharge of firearms within the limits of the municipality, other than at a sport shooting range.

(e) Defines "sport shooting range" in this section.

SECTION 6. Amends Subtitle B, Title 7, Local Governmental Code, by adding Chapter 236, as follows:

CHAPTER 236. COUNTY REGULATION OF FIREARMS, AMMUNITION, FIREARM SUPPLIES, AND SPORT SHOOTING RANGES

Sec. 236.001. DEFINITION. Defines "sport shooting range" in this chapter.

Sec. 236.002. FIREARMS; SPORT SHOOTING RANGE. Prohibits a county, notwithstanding any other law, including Section 43.002 of this code and Chapter 251, Agriculture Code, from adopting regulations relating to:

(1) the transfer, private ownership, keeping, transportation, licensing, or registration or firearms, ammunition, or firearm supplies; or

(2) the discharge of a firearm at a sport shooting range.

SECTION 7. Amends Section 250.001(a), Local Government Code, to define "association," "private club," and "sport shooting range" in this section.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2011.