

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1586

SPONSOR: Senator Bronson

SUBJECT: Civil Actions Against Manufacturers and Dealers of Firearms

DATE: April 1, 1999

REVISED: 4/19/99 \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION                  |
|----|---------------|----------------|-----------|-------------------------|
| 1. | <u>Forgas</u> | <u>Johnson</u> | <u>JU</u> | <u>Fav/1 amendment</u>  |
| 2. | <u>Gomez</u>  | <u>Cannon</u>  | <u>CJ</u> | <u>Fav/2 amendments</u> |
| 3. | _____         | _____          | <u>FP</u> | _____                   |
| 4. | _____         | _____          | _____     | _____                   |
| 5. | _____         | _____          | _____     | _____                   |

## I. Summary:

This bill prohibits civil actions against firearms manufacturers, dealers and trade associations by certain governmental entities under certain circumstances. The right to sue the firearms entities for damages, abatement, or injunctive relieve resulting from the lawful design, marketing, or sale of firearms to the public is prohibited. The specified entities prohibited from bringing such suits are the state or its agencies and instrumentalities, counties, municipalities, towns, special purpose districts, or other political subdivisions of the state.

The bill does not prohibit an individual person from bringing such a suit. Additionally, it specifically allows actions against firearms manufacturers or dealers for breach of contract or warranty in connection with firearms purchased by the county, municipality, special purpose district or other political subdivision or agency of the state. Further, the bill does not prohibit actions for injuries resulting from a firearm malfunction due to defects in design or manufacture.

Civil and criminal penalties are specified for violations of the bill's provisions. Officials, agents or employees of the stated governmental entities commit third degree felonies when they willfully and knowingly institute a proscribed action. Additionally, the bill allows defendants to recover all expenses, costs, compensation for loss of income and attorney's fees when civil actions are brought in violation of this section.

This bill creates section 790.331 of the Florida Statutes.

## II. Present Situation:

Local governments are political subdivisions of the state and have only those rights and powers as provided by the constitution and the Legislature. Article VIII, sections 2(a-b) of the Florida Constitution provide that municipalities may be established pursuant to general or special law and that they have governmental, corporate and proprietary powers which may be exercised except as otherwise provided by law. Pursuant to section 1(f) of Article VIII of the constitution, non-

charter counties have such power of self-government as provided by general or special law and charter counties, pursuant to section 1(g) of Article VIII of the constitution, have all powers of local self-government not inconsistent with general law or special law approved by vote of the electors.

Currently, there are no state statutes or constitutional provisions which prohibit counties or municipalities from instituting product liability lawsuits, or any other type of legal or equitable action, against firearms manufacturers, dealers or trade associations. However, s. 790.33, F.S., expressly preempts local governmental regulation of firearms and ammunition, with the exception of waiting period ordinances enacted by counties, so as to provide uniform firearms laws in the state.

The State of Georgia recently enacted legislation which specifically reserves to the state the right to institute legal action against manufacturers or dealers arising from the lawful design, marketing or sale of products. Alaska, Arkansas, Kansas, Texas and the federal government are also considering similar legislation specifically tailored to the firearms industry. The legislation being considered by the other states and the federal government does not contain any criminal penalties for those governmental officials who pursue litigation in violation of the respective statutes.

### **III. Effect of Proposed Changes:**

The bill specifically prohibits governmental entities from instituting legal proceedings against firearms manufacturers, dealers and trade associations for claims arising or resulting from the lawful design, marketing or sale of firearms to the public. It expressly declares that the manufacture and sale of firearms by manufacturers and dealers duly licensed by the appropriate federal and state authorities is a lawful activity and is not unreasonably dangerous. The bill also states that the unlawful use of firearms and ammunition is the proximate cause of injuries arising from their unlawful sale.

The bill defines, in two different subsections, which governmental entities are prohibited from bringing the subject lawsuits. One subsection lists the entities as follows: "...the state or its agencies and instrumentalities, or...a county, municipality, town, special purpose district, or any other political subdivision of the state..." The other subsection identifies all of the aforementioned entities with the exception of "the state or its agencies and instrumentalities." Accordingly, one subsection is broader in scope than the other and arguably the broader one would preclude the state from pursuing lawsuits as well.

The bill does not prohibit private citizens from pursuing lawsuits against firearms manufacturers and dealers for claims arising from or arising out of the lawful design, marketing or sale of firearms. However, any such lawsuit could be hampered by the bill's legislative finding that the manufacture and sale of firearms by dealers and manufacturers duly licensed by the appropriate federal and state authorities is a lawful activity and not unreasonably dangerous. The lawsuit could be even more difficult to pursue given the additional legislative finding that the unlawful use of firearms and ammunition, rather than their lawful manufacture, distribution or sale, is the proximate cause of injuries arising from their unlawful use. Unlike other provisions in the bill, the legislative findings are not stated to be limited to this section or chapter (chapter 790, F.S., which is entitled "Weapons and firearms"). Depending on the circumstances, courts will look to

legislative intent of similar statutes when construing elements of a cause of action and, accordingly, the bill's legislative findings could be applied to all products liability suits involving firearms. *See State v. Maxwell, 682 So.2d 83 (Fla. 1996).*

The bill also provides that actions against firearms manufacturers or dealers for breach of contract or warranty in connection with firearms purchased by the governmental entity are not prohibited. Likewise, personal injury lawsuits arising from a firearm malfunction due to defects in design or manufacture are also not prohibited. However, for purposes of this section, it is declared that the potential of a firearm to cause serious injury, damage or death as a result of normal function does not constitute a defective condition of the product. Additionally, a firearm may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when discharged legally or illegally. These provisions attempt to clarify that a firearm's intended purpose shall not be considered a defective condition in a products liability lawsuit.

Violations of the bill's provisions could result in criminal and civil penalties. Any governmental official who willfully and knowingly brings, or is a party to bringing, an action in violation of this section commits a third degree felony. The bill identifies the list of potential felons as "[a]ny official, agent, or employee of a county, municipality, town, special purpose district, or other political subdivision or agent of the state..." This could include mayors, city commissioners, county commissioners, city and county attorneys, attorneys for state agencies, secretaries of state agencies and the Florida Attorney General. The penalty could be up to five years in prison, a \$5,000 fine or both.

The civil sanctions imposed by the bill include recovery of all expenses resulting from the bringing of such action, plus attorney's fees, costs and compensation for loss of income. The person, persons and/or unit of government bringing the action shall be responsible for paying the expenses awarded to the defendant. The bill does not specify which entity or person is responsible for paying the attorney's fees, costs and lost income to the defendant.

The bill is effective upon becoming law and applies to any action pending on, or brought on or after the effective date. Miami Dade County is the only governmental entity which currently has a lawsuit pending which would be affected by the bill.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill probably does not violate the access to courts provisions of the Florida Constitution as governmental entities are not “persons” typically protected by Article I, Section 21. As stated previously, governmental entities only have those powers expressly given to them in the constitution or statutes and may have any power taken away that is not provided in the constitution. This is especially so when the state preempts a specific area, as it has done with weapons and firearms in ch. 790, F.S.

The bill’s criminal penalties could potentially violate the equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Florida Constitution. The bill clearly makes it a criminal act for governmental officials to institute the specified lawsuits whereas no such penalty exists for private citizens. There must be a valid and substantial reason for the classification and, to determine the rationality of the law, the courts look at the purpose the law serves, the facts involved, the impact of the law upon citizens and the relationship between the law and these factors. *See Newman v. Carson, 280 So.2d 426 (Fla. 1973)*. However, the Legislature has a great deal of discretion in determining what measures are necessary for the public’s protection and the courts will not substitute their judgment for that of the Legislature insofar as the wisdom or policy of the act is concerned. *See Hamilton v. State, 366 So.2d 8 (Fla. 1978)*.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill could result in a decreased number of lawsuits against manufacturers and dealers of firearms. However, the precise impact is undeterminable.

**C. Government Sector Impact:**

Theoretically, the bill could result in various criminal penalties, the harshest of which is imprisonment of a government official who willfully and knowingly proceeds with the filing of the proscribed lawsuit. The bill also could result in governmental officials and entities paying sums for attorney’s fees, costs, expenses and lost income to defendants. No accurate prediction of the impact can be made.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill prohibits, in two separate subsections, certain governmental entities from bringing certain lawsuits against firearms manufacturers, dealers and trade associations. As stated previously, the subsections are inconsistent as one subsection prohibits all governmental entities while the other prohibits all governmental entities except those “on behalf of the state.” Adding to the inconsistency, the criminal penalty provision applies to all governmental entities. Given the inconsistencies, a court is likely to apply the broader interpretation so as to bring the state within the bill’s provisions.

**VIII. Amendments:****#1 by Judiciary:**

Deletes from the bill the imposition of criminal penalties upon governmental officials who knowingly bring an action in violation of the bill’s provisions.

**#1 by Criminal Justice:**

Specifies that the bill shall not infringe “upon the rights of a *natural person to sue* a firearms manufacturer, trade association or dealer in any other capacity.” This amendment makes express that the bill does not prohibit private citizens from pursuing lawsuits against firearms manufacturers and dealers for claims arising from or arising out of the lawful design, marketing or sale of firearms.

**#2 by Criminal Justice:**

Deletes provision which allows the defendant to recover all expenses from the person or the persons who file a lawsuit in violation of the bill. Maintains provision which allows recovery for such costs against the unit of government bringing the suit. The effect of this amendment is to insulate government employees and officials from personal liability for the costs of bringing suit.