

STORAGE NAME: h0937.go

DATE: March 2, 1999

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

BILL #: HB 937

RELATING TO: Firearms/Dealers and Manufacturers

SPONSOR(S): Representative Albright

COMPANION BILL(S): SB 1586 (identical) and HB 865 (similar)

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

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

I. SUMMARY:

This bill prohibits suits against manufacturers and dealers of firearms and ammunition by certain governmental entities under certain circumstances. It does not prohibit lawsuits for injuries resulting from a firearm malfunction or for breach of contract or warranty. It provides for penalties for any governmental official who willfully violates this section, and provides for recovery of attorney fees and expenses by the defendant.

II. SUBSTANTIVE ANALYSIS:

A. 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. See Fla. Const., Art. VIII sec. 1(a), (f), (g) and sec. 2(a) and (b), regarding the exercise of governmental powers except as provided by law.

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

B. EFFECT OF PROPOSED CHANGES:

This bill would prohibit a governmental entity, or anyone on behalf of a governmental entity, from suing a firearms manufacturer, trade association or firearms dealer for damages, abatement or injunctive relief resulting from the lawful design, marketing or sale of firearms to the public. This would not affect the right of an individual or the state to maintain such a lawsuit on their own behalf. This bill states that it does not prohibit actions for breach of contract or warranty in connection with the purchase of firearms, nor prohibit actions for injuries resulting from a firearm malfunction due to defective design or manufacture.

This bill would determine that the potential for a firearm to cause serious injury as a result of normal function does not constitute a defective condition of the firearm, regardless of whether the discharge was legal or illegal.

This bill would provide punishment for any local governmental official who willfully and knowingly violates this section; it would provide recovery of expenses by the defendant from the governmental entity bringing such a lawsuit; and where a court determines the defendant is immune from such suit, it would provide for the award of attorney fees, costs, lost income and expenses.

This bill would apply to any such lawsuit pending on, or brought on or after the effective date.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates sec. 790.331, F.S.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

By preventing certain lawsuits against firearms manufacturers and dealers which do business in the state, this bill would save an indeterminate amount in litigation expenses and protect their assets from potential liability.

3. Effects on Competition, Private Enterprise and Employment Markets:

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.

STORAGE NAME: h0937.go

DATE: March 2, 1999

PAGE 6

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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Douglas Pile

Jimmy O. Helms