

STORAGE NAME: h0937.jud

DATE: March 22, 1999

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

BILL #: HB 937

RELATING TO: Firearms/Dealers and Manufacturers

SPONSOR(S): Representative Albright and others

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

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

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

I. SUMMARY:

HB 937 removes the right and authority of a political subdivision of the state to sue a firearms manufacturer, firearms trade association, or firearms dealer. The bill further prohibits a political subdivision of the state from suing or recovering from a firearms manufacturer, firearms trade association, or firearms dealer damages, abatement, or injunctive relief arising out of or resulting from the lawful design, marketing, or sale of firearms to the public.

The bill exempts from prohibition actions against manufacturers or dealers for breach of contract or warranty in connection with firearms purchased by a political subdivision of the state as well as actions for injuries resulting from firearm malfunctions due to defects in design or manufacture.

The bill imposes criminal sanctions on officers of a political subdivision of the state who, while acting in their official position, and within the scope of their employment in office, willfully and knowingly bring or are a party to bringing an action in violation of the bill. In so doing, such persons commit a felony of the third degree, punishable by a prison term not exceeding 5 years and a \$5,000 fine. The bill provides that a defendant is entitled to recover all expenses resulting from a civil action brought in violation of the bill from the persons and/or political subdivision of the state that brought the action. The bill additionally provides that a court may award attorney's fees, costs, compensation for loss of income, and all expenses incurred as a result of a suit to a defendant who is determined by the court to be immune under the bill.

The bill contains a number of findings of fact and legislative determinations. It declares that the manufacture and sale of firearms in Florida is lawful activity and not unreasonably dangerous. It also declares that the unlawful use of firearms is the proximate cause of injuries arising out of such unlawful use, and that the potential of a firearm to cause injury, damage, or death as a result of normal function does not constitute a defective condition of the product. Finally, the bill provides that 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.

Provides that the bill shall apply to all actions pending on or brought after the effective date of the bill.

The bill shall become effective on becoming law.

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 legislature through general or special law. Art. VIII 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.

B. EFFECT OF PROPOSED CHANGES:

HB 937 removes the right and authority of a political subdivision of the state to sue a firearms manufacturer, firearms trade association, or firearms dealer. The bill further prohibits a political subdivision of the state from suing or recovering from a firearms manufacturer, firearms trade association, or firearms dealer damages, abatement, or injunctive relief arising out of or resulting from the lawful design, marketing, or sale of firearms to the public.

The bill exempts from prohibition actions against manufacturers or dealers for breach of contract or warranty in connection with firearms purchased by a political subdivision of the state as well as actions for injuries resulting from firearm malfunctions due to defects in design or manufacture.

The bill imposes criminal sanctions on officers of a political subdivision of the state who, while acting in their official position, and within the scope of their employment in office, willfully and knowingly bring or are a party to bringing an action in violation of the bill. In so doing, such persons commit a felony of the third degree, punishable by a prison term not exceeding 5 years and a \$5,000 fine.

The bill provides that a defendant is entitled to recover all expenses resulting from a civil action brought in violation of the bill from the persons and/or political subdivision of the state that brought the action. Provides that a court may award attorney's fees, costs, compensation for loss of income, and all expenses incurred as a result of a suit to a defendant who is determined by the court to be immune under the bill.

The bill contains a number of findings of fact and legislative determinations. It declares that the manufacture and sale of firearms in Florida is lawful activity and not unreasonably dangerous. It also declares that the unlawful use of firearms is the proximate cause of injuries arising out of such unlawful use, and that the potential of a firearm to cause injury, damage, or death as a result of normal function does not constitute a defective condition of the product. Finally, the bill provides that 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.

The bill shall apply to all actions pending on or brought after the effective date of the bill.

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?

The bill eliminates the authority of a political subdivision of the state (city, county, special district, etc.) to bring an action against a firearms manufacturer or dealer on behalf of their constituents, except for actions for breach of contract, breach of warranty, or products liability arising out of firearm malfunctions due to defects in design or manufacturing.

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

No.

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

No.

- 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?

None.

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

None.

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

The bill will provide a limited shield for firearm manufacturers and dealers against lawsuits brought by political subdivisions of the state on behalf of their constituents.

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

Yes. The bill eliminates the authority of a political subdivision of the state to sue firearms manufacturers or dealers on behalf of its constituents. This is currently lawful.

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?

No.

- 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 s. 790.331, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Declares that the manufacture and sale of firearms in Florida is lawful activity and not unreasonably dangerous. Also declares that the unlawful use of firearms is the proximate cause of injuries arising out of such unlawful use. Removes the right and authority of a political subdivision of the state to sue a firearms manufacturer, firearms trade association, or firearms dealer. Prohibits a political subdivision of the state from suing or recovering from a firearms manufacturer, firearms trade association, or firearms dealer damages, abatement, or injunctive relief arising out of or resulting from the lawful design, marketing, or sale of firearms to the public.

Does not prohibit actions against manufacturers or dealers for breach of contract or warranty in connection with firearms purchased by a political subdivision of the state. Does not prohibit actions for injuries resulting from firearm malfunctions due to defects in design or manufacture. Declares that the potential of a firearm to cause injury, damage, or death as a result of normal function does not constitute a defective condition of the product. Provides that 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.

Provides that any official, agent, or employee of a political subdivision of the state, while acting in his or her official position, and within the scope of his or her employment in office, willfully and knowingly brings or is a party to bringing an action in violation of this section commits a felony of the third degree. Provides that a defendant is entitled to recover all expenses resulting from a civil action brought in violation of the bill from the persons and/or political subdivision of the state that brought the action. Provides that a court may award attorney's fees, costs, compensation for loss of income, and all expenses incurred as a result of a suit to a defendant who is immune under the bill.

Section 2. Provides that the bill shall apply to all actions pending on or brought after the effective date of the bill.

Section 3. Provides that the bill will become effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

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:

By reducing litigation costs, the bill may foster increased firearms manufacturing and sales activity in Florida.

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:

The bill as written contains a number of redundancies. If it is the intent of the Legislature to prevent future lawsuits of the kind addressed by the bill, the means to that end could be drafted in a more precise manner. By eliminating the authority of political subdivisions to bring lawsuits against firearm manufacturers and dealers, the Legislature could very effectively forestall any such suits in the future. As such, the additional findings of fact and criminal penalties provisions may not be necessary.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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