

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 1398

SPONSOR: Senator Bronson

SUBJECT: Civil Actions

DATE: March 29, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill prohibits civil actions against firearms and ammunition manufacturers, distributors, 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, special districts, or other political subdivisions of the state. The bill does not prohibit an individual person from bringing such a suit.

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

The bill provides for attorney's fees, costs, lost income and expenses for civil actions brought in violation of this section, but does not apply to any pending action withdrawn within 30 days of the effective date of this bill.

The bill also creates new provisions pertaining to the manufacture, distribution, and sale of all lawful products which are similar to the provisions pertaining to firearms and ammunition.

The bill takes effect upon becoming law.

This bill creates s. 790.331, F.S., and an undesignated section 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.

Generally, products liability encompasses the liability of a manufacturer, processor, or non-manufacturing seller for injury to the person or property of a buyer or third party caused by a product which has been sold in a defective condition. *41A Fla. Jur. 2d Products Liability, s. 1* (1995). Products liability actions may be brought under a variety of theories, including negligence, strict liability, and breach of warranty. *Id., at s.2*. However, the manufacturer or seller of a product is not deemed to be an insurer of the safety of the product and a manufacturer is not under a duty to make its product accident-proof. *See, Tampa Drug Co. v. Wait*, 103 So.2d 603 (Fla. 1958). The concern of product liability law is only to protect the user from the unreasonably dangerous product or one fraught with unexpected danger. *See, Royal v. Black & Decker Mfg. Co.*, 205 So.2d 307 (Fla. 3d D.C.A. 1967).

A product which has obviously and inherently dangerous qualities is not necessarily a defective product under products liability law. *See, Technology, Inc. v. Ware Construction Co.*, 445 So.2d 329, 331 (Fla. 1983). Florida law holds that "one who is injured while using a perfectly made axe or knife would have no right to a strict liability action against the manufacturer because the product that injured him was not defective." *Cassisi v. Maytag, Co.*, 396 So.2d 1140, 1143 (Fla. 1st D.C.A. 1981). This same principle applies to firearms and, absent proof of injury due to a manufacturing or design defect, firearms manufacturers are not liable under any products liability theory. *See, Trespalacios v. Valor Corp. of Florida*, 486 So.2d 649 (Fla. 3d D.C.A. 1986); *Coulson v. DeAngelo*, 493 So.2d 98 (Fla. 4th D.C.A. 1986).

Additionally, firearms manufacturers and distributors generally have not been subject to liability for the criminal use of firearms. More specifically, the following theories have failed to result in any liability for a firearms manufacturer or distributor:

- (1) Negligence, where the weapon was not defective, the manufacture or distribution of the weapon was not unlawful pursuant to either state or federal law, and neither the

manufacturer nor distributor had a duty to prevent the sale of handguns to persons who are likely to cause harm to the public;

(2) Strict liability in tort, on the basis that the manufacture of a firearm is an ultrahazardous activity;

(3) Strict liability in tort, where it was argued that the use of a gun solely for criminal acts made the gun a defective product; and

(4) Strict liability in tort, where there was no proof that the gun was defective, i.e., that it failed to operate as the consumer expected and that the defect was the proximate cause of injury.

See, Trespalacios; Coulson.

III. Effect of Proposed Changes:

The bill creates s. 790.331, F.S., to specifically prohibit governmental entities from instituting legal proceedings against firearms or ammunition manufacturers, distributors, dealers and trade associations for claims arising or resulting from the lawful design, marketing or sale of firearms or ammunition to the public. Subsection (1) expressly declares that the manufacture, distribution, and sale of firearms and ammunition by manufacturers, distributors, 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 use.

Subsection (2) provides, among other things, that “..this prohibition does not infringe upon the right of a natural person to sue a firearms or ammunition manufacturer, firearms trade association, firearms or ammunition distributor, or firearms or ammunition dealer in any other capacity.” Assumably, this provision allows non-governmental entities to pursue the types of claims governmental entities are prohibited from pursuing.

Subsection (4) provides that actions against firearms or ammunition manufacturers, distributors 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 or ammunition malfunction due to defects in design or manufacture are also not prohibited.

Subsection (5) provides that, for purposes of this section, 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. Additionally, 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. These provisions attempt to clarify that a firearm’s or ammunition’s intended purpose shall not be considered a defective condition in a products liability lawsuit.

The civil sanctions provided for in subsection (6) include recovery from the governmental entity of all expenses resulting from the bringing of such action, plus attorney’s fees, costs and compensation for loss of income. This subsection does not apply to an action pending on the effective date of this section if such pending action is withdrawn within 30 days after the effective date

Subsection (7) provides that 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 could be affected by the bill.

Section 2 of the bill contains a legislative finding that the manufacture, distribution, and sale of lawful products by persons or entities not prohibited from doing so are lawful activities and are not unreasonably dangerous. The bill also contains findings that the potential of a lawful product to cause serious injury, damage, or death as a result of normal function, use, or consumption does not constitute a defective condition of the product. Also, a lawful product may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when used or consumed legally or illegally.

The bill then provides that governmental entities are prohibited from instituting actions against any person, manufacturer, distributor, dealer, or trade association for cases arising out of the lawful design, marketing, distribution, or sale of lawful products to the public. Governmental entities are not prohibited from pursuing breach of contract or warranty claims in connection with products purchased by the governmental entity. They also are not prohibited from filing actions for injuries resulting from a malfunction due to design or manufacturing defects.

The bill takes effect upon becoming law.

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.

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, distributors, and dealers of firearms and ammunition. However, the precise impact is undeterminable.

C. Government Sector Impact:

The bill could result in governmental entities paying sums for attorney's fees, costs, expenses and lost income to defendants if product liability suits are brought in violation of the bill's provisions. No accurate prediction of the impact can be made.

The bill contains an effective date clause which states that it applies to any action pending on the effective date. As stated previously, Miami-Dade County is the only governmental entity known to be involved in the proscribed litigation at this time. Generally, substantive rights cannot be adversely affected by the enactment of legislation once those rights have vested and, accordingly, the legislation is usually held to be invalid as applied to those vested rights. *See, Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998). Arguably, the bill could not interfere with Miami-Dade County's lawsuit since its right to proceed with the lawsuit existed, and had vested, prior to the effective date of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.