

BILL ANALYSIS

C.S.H.B. 1595
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Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas recently allowed citizens to obtain a license to carry a concealed handgun, and required that the applicant complete certain proficiency instruction, which may be held at a shooting range. As urban and suburban growth has encroached into rural areas where shooting ranges are located, some municipalities have found such shooting ranges undesirable and responded with regulation and litigation, resulting in the closure of some shooting ranges. Concerned parties argue that sport shooting ranges that operate safely within the constraints of the law are needed in order to provide a place for applicants for a concealed handgun license to complete the required instruction and for other citizens to practice their ability to safely and proficiently use a gun. C.S.H.B. 1595 seeks to protect sport shooting ranges from certain actions by a governmental unit.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1595 amends the Civil Practice and Remedies Code to prohibit a governmental unit from bringing suit 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 operated, for the lawful discharge of firearms on the range, with certain exceptions. The bill specifies that nothing in provisions of law limiting the right to bring suit or recover damages in suits against a sport shooting range or a firearms or ammunition manufacturer, trade association, or seller prohibits a governmental unit from bringing such an action against a sport shooting range or its owner or operator, or the owners of real property on which a sport shooting range is operating for injunctive relief to enforce a valid ordinance, statute, or regulation or to require a sport shooting range to comply with generally accepted standards followed in the sport shooting range industry in Texas at the time of the range's construction, if the range began operation after September 1, 2011, and operates exclusively within the governmental unit's geographical limits, exclusive of its extraterritorial jurisdiction.

C.S.H.B. 1595 prohibits a civil action from being brought against a sport shooting range or its owner or operator, 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. The bill specifies that nothing in its limitation on civil action and recovery of damages provision prohibits a civil action against a sport shooting range or its owner or operator, or the owner of the real property on which a sport shooting range is operated, for recovery of damages for breach of contract for use of the real property on which a sport shooting range is located, damage or harm to private property or personal injury or death caused by the unlawful discharge of firearms on a sport shooting range, or injunctive relief to enforce a valid ordinance, statute, or regulation.

C.S.H.B. 1595 authorizes damages to be awarded, or an injunction to be obtained, in a civil action brought under these provisions of the bill if the claimant shows by a preponderance of the evidence, through the testimony of one or more expert witnesses, that the sport shooting range or its owner or operator, 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 or its owner or operator, or owner of real property on which a sport shooting range is operated in the same or similar circumstances.

C.S.H.B. 1595 requires a claimant in a suit against a sport shooting range or its owner or operator, 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. The bill authorizes the date for serving the report to be extended by written agreement of the affected parties. The bill 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.

C.S.H.B. 1595 requires the court, on the motion of the affected defendant and if, as to a defendant, an expert report has not been served within the required period, to enter an order that awards to the affected defendant attorney's fees and costs of court incurred by the defendant and that dismisses the claim with prejudice with respect to the affected defendant. The bill authorizes the court, if an expert report has not been served within the required period 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. The bill establishes 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.

C.S.H.B. 1595 authorizes a claimant to satisfy any requirement 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. The bill prohibits anything in its provisions relating to an expert report from being 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. The bill 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. The bill establishes that, until a claimant has served the expert report and curriculum vitae, all discovery is stayed except that after a claim is filed, all claimants, collectively, are prohibited from taking more than two depositions before the expert report is served.

C.S.H.B. 1595 defines "claim," "expert," and "expert report." The bill provides for the meaning of "claimant" by reference and provides for the meaning of "sport shooting range" by reference to the Local Government Code. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 1595 amends the Local Government Code to include, as an activity relating to firearms and explosives that a municipality is prohibited from regulating, the discharge of a firearm at a sport shooting range. The bill specifies that the provision establishing that this prohibition does not affect the authority a municipality has under another law to regulate the discharge of firearms within the limits of the municipality excludes such activity at a sport shooting range. The bill prohibits a county from adopting regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, ammunition, or firearm supplies, or the discharge of a firearm at a sport shooting range.

C.S.H.B. 1595 defines "association" or "private club."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1595 differs from the original by specifying that nothing in certain of its provisions limits the right to bring suit or recover damages in suits against a sport shooting range or a firearms or ammunition manufacturer, trade association, or seller prohibits a governmental unit from bringing an action against such entities under certain conditions and for certain purposes, whereas the original extends the exemption from such a limitation to a municipality.

C.S.H.B. 1595 contains provisions not included in the original defining "claim," "expert," and "expert report" and omits provisions included in the original defining "private suit" and "clear and convincing evidence."

C.S.H.B. 1595 differs from the original by limiting the civil actions that may be brought under certain conditions 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 under certain conditions, whereas the original limits private suits that may be brought under those conditions and against those parties.

C.S.H.B. 1595 differs from the original by authorizing damages to be awarded, or an injunction to be obtained, in a civil action brought if the claimant shows by a preponderance of the evidence that the sport shooting range or its owner or operator, 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, whereas the original authorizes damages to be awarded or an injunction to be obtained in a private suit brought pursuant to such damage or harm to private property, personal injury or death, or injunctive relief only if the claimant establishes a right to recovery by clear and convincing evidence.

C.S.H.B. 1595 contains provisions not included in the original establishing requirements and conditions relating to serving an expert report on each party of a suit against a sport shooting range or its owner or operator, or the owner of real property on which the sport shooting range is operated.

C.S.H.B. 1595 omits a provision included in the original including the operation of a sport shooting range among the activities relating to firearms and explosives that a municipality is prohibited from regulating.

C.S.H.B. 1595 omits a provision included in the original, in the prohibition against a county adopting regulations relating to certain acts relating to firearms, ammunition, or firearm supplies, including among those acts the operation of a sport shooting range. The substitute differs from the original by prohibiting a county from adopting such regulations, whereas the original specifies that the prohibition by the county is by order of the county commissioners court.

C.S.H.B. 1595 contains a saving provision not included in the original and differs from the original by establishing an effective date of September 1, 2011, whereas the original provides for immediate effect on passage, or September 1, 2011.

C.S.H.B. 1595 contains conforming changes not included in the original and differs from the original in nonsubstantive ways.