

BILL ANALYSIS

S.B. 766
By: Estes
Culture, Recreation & Tourism
Committee Report (Unamended)

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 assert 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. S.B. 766 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

S.B. 766 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 owners or operators, 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.

S.B. 766 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 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 discharge of a firearm on a sport shooting range, or injunctive relief to enforce a valid ordinance, statute, or regulation.

S.B. 766 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 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.

S.B. 766 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.

S.B. 766 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.

S.B. 766 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.

S.B. 766 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.

S.B. 766 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 specifies that the prohibition does not affect the authority a municipality has under another law to regulate the hours of operation of a sport shooting range, but prohibits the hours of operation from being more limited than the least limited hours of operation of any other business in the municipality other than a business permitted or licensed to sell or serve alcoholic beverages for on-premises consumption. The bill defines "sport shooting range" by reference for purposes of these provisions.

S.B. 766 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. The bill authorizes a county to regulate the discharge of a firearm at an outdoor sport shooting range on lots that are 10 acres or smaller and are located in the unincorporated area of the county in certain subdivisions.

S.B. 766 defines "association" or "private club."

EFFECTIVE DATE

September 1, 2011.