

By: Isaac

H.B. No. 1595

Substitute the following for H.B. No. 1595:

By: Larson

C.S.H.B. No. 1595

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the liability of a sport shooting range and the
3 regulation of firearms, ammunition, firearm supplies, and sport
4 shooting ranges.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Chapter 128, Civil Practice and
7 Remedies Code, is amended to read as follows:

8 CHAPTER 128. LIMITATION ON SUITS AGAINST SPORT SHOOTING RANGE
9 OR FIREARMS OR AMMUNITION MANUFACTURER, TRADE
10 ASSOCIATION, OR SELLER

11 SECTION 2. Chapter 128, Civil Practice and Remedies Code,
12 is amended by designating Section 128.001 as Subchapter A, Chapter
13 128, Civil Practice and Remedies Code, and adding a heading to
14 Subchapter A to read as follows:

15 SUBCHAPTER A. SUIT BY GOVERNMENTAL UNIT

16 SECTION 3. Section 128.001, Civil Practice and Remedies
17 Code, is amended by amending Subsections (a) and (b) and adding
18 Subsection (f) to read as follows:

19 (a) In this section:

20 (1) "Governmental [~~,"governmental]~~ unit" means:

21 (A) [~~(1)~~] a political subdivision of the state,
22 including a municipality or county; and

23 (B) [~~(2)~~] any other agency of government whose
24 authority is derived from the laws or constitution of this state.

1 (2) "Sport shooting range" has the meaning assigned by
2 Section 250.001, Local Government Code.

3 (b) Except as provided by Subsections [~~Subsection~~] (c) and
4 (f), a governmental unit may not bring suit against:

5 (1) a firearms or ammunition manufacturer, trade
6 association, or seller for recovery of damages resulting from, or
7 injunctive relief or abatement of a nuisance relating to, the
8 lawful design, manufacture, marketing, or sale of firearms or
9 ammunition to the public; or

10 (2) a sport shooting range, the owners or operators of
11 a sport shooting range, or the owners of real property on which a
12 sport shooting range is operated, for the lawful discharge of
13 firearms on the sport shooting range.

14 (f) Nothing in this section shall prohibit a governmental
15 unit from bringing an action against a sport shooting range, the
16 owners or operators of a sport shooting range, or the owners of real
17 property on which a sport shooting range is operating if the sport
18 shooting range began operation after September 1, 2011, and
19 operates exclusively within the governmental unit's geographical
20 limits, exclusive of the governmental unit's extraterritorial
21 jurisdiction:

22 (1) for injunctive relief to enforce a valid
23 ordinance, statute, or regulation; or

24 (2) to require the sport shooting range to comply with
25 generally accepted standards followed in the sport shooting range
26 industry in this state at the time of the sport shooting range's
27 construction.

1 SECTION 4. Chapter 128, Civil Practice and Remedies Code,
2 is amended by adding Subchapter B to read as follows:

3 SUBCHAPTER B. CIVIL ACTIONS

4 Sec. 128.051. DEFINITIONS. In this subchapter:

5 (1) "Claim" means any relief sought in a civil action,
6 including all forms of monetary recovery or injunctive relief.

7 (2) "Claimant" has the meaning assigned by Section
8 41.001.

9 (3) "Expert" means a person who is:

10 (A) giving opinion testimony about the
11 appropriate standard of care for a sport shooting range, an owner or
12 operator of a sport shooting range, or the owner of real property on
13 which a sport shooting range is operated, or the causal
14 relationship between the injury, harm, or damages claimed and the
15 alleged departure from the applicable standard of care; and

16 (B) qualified to render opinions on the standards
17 and causal relationship described by Paragraph (A) under the Texas
18 Rules of Evidence.

19 (4) "Expert report" means a written report by an
20 expert that provides a fair summary of the expert's opinions as of
21 the date of the report regarding applicable standards of care for
22 operation of a sport shooting range, the manner in which a defendant
23 failed to meet the standards, and the causal relationship between
24 that failure and the injury, harm, or damages claimed.

25 (5) "Sport shooting range" has the meaning assigned by
26 Section 250.001, Local Government Code.

27 Sec. 128.052. LIMITATION ON CIVIL ACTION AND RECOVERY OF

1 DAMAGES. (a) Except as provided by Subsection (b), a civil action
2 may not be brought against a sport shooting range, the owner or
3 operator of a sport shooting range, or the owner of the real
4 property on which a sport shooting range is operated for recovery of
5 damages resulting from, or injunctive relief or abatement of a
6 nuisance relating to, the lawful discharge of firearms.

7 (b) Nothing in this section prohibits a civil action against
8 a sport shooting range, the owner or operator of a sport shooting
9 range, or the owner of the real property on which a sport shooting
10 range is operated for recovery of damages for:

11 (1) breach of contract for use of the real property on
12 which a sport shooting range is located;

13 (2) damage or harm to private property caused by the
14 unlawful discharge of firearms on a sport shooting range;

15 (3) personal injury or death caused by the unlawful
16 discharge of a firearm on a sport shooting range; or

17 (4) injunctive relief to enforce a valid ordinance,
18 statute, or regulation.

19 (c) Damages may be awarded, or an injunction may be
20 obtained, in a civil action brought under this section if the
21 claimant shows by a preponderance of the evidence, through the
22 testimony of one or more expert witnesses, that the sport shooting
23 range, the owner or operator of the sport shooting range, or the
24 owner of real property on which the sport shooting range is
25 operated, with wilful and wanton negligence, deviated from the
26 standard of care that is reasonably expected of an ordinarily
27 prudent sport shooting range, owner or operator of a sport shooting

1 range, or owner of real property on which a sport shooting range is
2 operated in the same or similar circumstances.

3 Sec. 128.053. EXPERT REPORT. (a) In a suit against a sport
4 shooting range, an owner or operator of a sport shooting range, or
5 the owner of real property on which a sport shooting range is
6 operated, a claimant shall, not later than the 90th day after the
7 date the original petition was filed, serve on each party or the
8 party's attorney one or more expert reports, with a curriculum
9 vitae of each expert listed in the report for each defendant against
10 whom a claim is asserted. The date for serving the report may be
11 extended by written agreement of the affected parties. Each
12 defendant whose conduct is implicated in a report must file and
13 serve any objection to the sufficiency of the report not later than
14 the 21st day after the date the report is served or all objections
15 are waived.

16 (b) If, as to a defendant, an expert report has not been
17 served within the period specified by Subsection (a), the court, on
18 the motion of the affected defendant, shall, subject to Subsection
19 (c), enter an order that:

20 (1) awards to the affected defendant attorney's fees
21 and costs of court incurred by the defendant; and

22 (2) dismisses the claim with prejudice with respect to
23 the affected defendant.

24 (c) If an expert report has not been served within the
25 period specified by Subsection (a) because elements of the report
26 are found deficient, the court may grant one extension of not more
27 than 30 days to the claimant in order to cure the deficiency. If the

1 claimant does not receive notice of the court's ruling granting the
2 extension until after the 90th day after the date the deadline has
3 passed, then the 30-day extension runs from the date the plaintiff
4 first receives the notice.

5 (d) Notwithstanding any other provision of this section, a
6 claimant may satisfy any requirement of this section for serving an
7 expert report by serving reports of separate experts regarding
8 different defendants or regarding different issues arising from the
9 conduct of a defendant, including issues of liability and
10 causation. Nothing in this section shall be construed to mean that a
11 single expert must address all liability and causation issues with
12 respect to all defendants or with respect to both liability and
13 causation issues for a defendant.

14 (e) A court shall grant a motion challenging the adequacy of
15 an expert report only if it appears to the court, after a hearing,
16 that the report does not represent an objective, good faith effort
17 to comply with the requirements of an expert report.

18 (f) Until a claimant has served the expert report and
19 curriculum vitae as required by Subsection (a), all discovery is
20 stayed except that after a claim is filed all claimants,
21 collectively, may take not more than two depositions before the
22 expert report is served as required by Subsection (a).

23 SECTION 5. Section 229.001, Local Government Code, is
24 amended by amending Subsections (a) and (b) and adding Subsection
25 (e) to read as follows:

26 (a) Notwithstanding any other law, including Section 43.002
27 of this code and Chapter 251, Agriculture Code, a [A] municipality

1 may not adopt regulations relating to:

2 (1) the transfer, private ownership, keeping,
3 transportation, licensing, or registration of firearms,
4 ammunition, or firearm supplies; or

5 (2) the discharge of a firearm at a sport shooting
6 range.

7 (b) Subsection (a) does not affect the authority a
8 municipality has under another law to:

9 (1) require residents or public employees to be armed
10 for personal or national defense, law enforcement, or another
11 lawful purpose;

12 (2) regulate the discharge of firearms within the
13 limits of the municipality, other than at a sport shooting range;

14 (3) regulate the use of property, the location of a
15 business, or uses at a business under the municipality's fire code,
16 zoning ordinance, or land-use regulations as long as the code,
17 ordinance, or regulations are not used to circumvent the intent of
18 Subsection (a) or Subdivision (5) of this subsection;

19 (4) regulate the use of firearms in the case of an
20 insurrection, riot, or natural disaster if the municipality finds
21 the regulations necessary to protect public health and safety;

22 (5) regulate the storage or transportation of
23 explosives to protect public health and safety, except that 25
24 pounds or less of black powder for each private residence and 50
25 pounds or less of black powder for each retail dealer are not
26 subject to regulation; or

27 (6) regulate the carrying of a firearm by a person

1 other than a person licensed to carry a concealed handgun under
2 Subchapter H, Chapter 411, Government Code, at a:

- 3 (A) public park;
- 4 (B) public meeting of a municipality, county, or
5 other governmental body;
- 6 (C) political rally, parade, or official
7 political meeting; or
- 8 (D) nonfirearms-related school, college, or
9 professional athletic event.

10 (e) In this section "sport shooting range" has the meaning
11 assigned by Section 250.001.

12 SECTION 6. Subtitle B, Title 7, Local Government Code, is
13 amended by adding Chapter 236 to read as follows:

14 CHAPTER 236. COUNTY REGULATION OF FIREARMS, AMMUNITION, FIREARM
15 SUPPLIES, AND SPORT SHOOTING RANGES

16 Sec. 236.001. DEFINITION. In this chapter, "sport shooting
17 range" has the meaning assigned by Section 250.001.

18 Sec. 236.002. FIREARMS; SPORT SHOOTING RANGE.
19 Notwithstanding any other law, including Section 43.002 of this
20 code and Chapter 251, Agriculture Code, a county may not adopt
21 regulations relating to:

22 (1) the transfer, private ownership, keeping,
23 transportation, licensing, or registration of firearms,
24 ammunition, or firearm supplies; or

25 (2) the discharge of a firearm at a sport shooting
26 range.

27 SECTION 7. Section 250.001(a), Local Government Code, is

1 amended to read as follows:

2 (a) In this section:

3 (1) "Association" or "private club" means an
4 association or private club that operates a sport shooting range at
5 which not fewer than 20 different individuals discharge firearms
6 each calendar year.

7 (2) "Sport [~~,"sport~~] shooting range" means a business
8 establishment, private club, or association that operates an area
9 for the discharge or other use of firearms for silhouette, skeet,
10 trap, black powder, target, self-defense, or similar recreational
11 shooting.

12 SECTION 8. The change in law made by this Act applies only
13 to a cause of action that accrues on or after the effective date of
14 this Act. A cause of action that accrues before the effective date
15 of this Act is governed by the law in effect immediately before the
16 effective date of this Act, and that law is continued in effect for
17 that purpose.

18 SECTION 9. This Act takes effect on September 1, 2011.