

By: Estes, et al.

S.B. No. 766

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 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 discharge of firearms on a sport shooting range;

15 (3) personal injury or death caused by the discharge  
16 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 operated  
25 deviated from the standard of care that is reasonably expected of an  
26 ordinarily prudent sport shooting range, owner or operator of a  
27 sport shooting range, or owner of real property on which a sport

1 shooting range is operated in the same or similar circumstances.

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

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

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

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

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

1 extension until after the 90th day after the date the deadline has  
2 passed, then the 30-day extension runs from the date the plaintiff  
3 first receives the notice.

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

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

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

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

25 (a) Notwithstanding any other law, including Section 43.002  
26 of this code and Chapter 251, Agriculture Code, a [A] municipality  
27 may not adopt regulations relating to:

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

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

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

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

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

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

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

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

26           (6) regulate the carrying of a firearm by a person  
27 other than a person licensed to carry a concealed handgun under

1 Subchapter H, Chapter 411, Government Code, at a:

2 (A) public park;

3 (B) public meeting of a municipality, county, or  
4 other governmental body;

5 (C) political rally, parade, or official  
6 political meeting; or

7 (D) nonfirearms-related school, college, or  
8 professional athletic event; or

9 (7) regulate the hours of operation of a sport  
10 shooting range, except that the hours of operation may not be more  
11 limited than the least limited hours of operation of any other  
12 business in the municipality other than a business permitted or  
13 licensed to sell or serve alcoholic beverages for on-premises  
14 consumption.

15 (e) In this section, "sport shooting range" has the meaning  
16 assigned by Section 250.001.

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

19 CHAPTER 236. COUNTY REGULATION OF FIREARMS, AMMUNITION, FIREARM  
20 SUPPLIES, AND SPORT SHOOTING RANGES

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

23 Sec. 236.002. FIREARMS; SPORT SHOOTING RANGE.  
24 Notwithstanding any other law, including Chapter 251, Agriculture  
25 Code, a county may not adopt regulations relating to:

26 (1) the transfer, private ownership, keeping,  
27 transportation, licensing, or registration of firearms,



1 ammunition, or firearm supplies; or

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

4 Sec. 236.003. REGULATION OF OUTDOOR SPORT SHOOTING RANGE.  
5 Notwithstanding Section 236.002, a county may regulate the  
6 discharge of a firearm at an outdoor sport shooting range as  
7 provided by Subchapter B, Chapter 235.

8 SECTION 7. Subsection (a), Section 250.001, Local  
9 Government Code, is amended to read as follows:

10 (a) In this section:

11 (1) "Association" or "private club" means an  
12 association or private club that operates a sport shooting range at  
13 which not fewer than 20 different individuals discharge firearms  
14 each calendar year.

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

20 SECTION 8. The change in law made by this Act applies only  
21 to a cause of action that accrues on or after the effective date of  
22 this Act. A cause of action that accrues before the effective date  
23 of this Act is governed by the law in effect immediately before the  
24 effective date of this Act, and that law is continued in effect for  
25 that purpose.

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