By: Estes, et al. (Isaac)

S.B. No. 766

## A BILL TO BE ENTITLED

1	AN ACT
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	<pre>(1) "Governmental[, "governmental] unit" means:</pre>
21	(A) $[(1)]$ a political subdivision of the state,
22	including a municipality or county; and
23	(B) [ <del>(2)</del> ] any other agency of government whose
24	authority is derived from the laws or constitution of this state.

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

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

5 <u>(1)</u> 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.

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

(1) for injunctive relief to enforce a valid ordinance, statute, or regulation; or (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 Sec. 128.051. DEFINITIONS. In this subchapter: 4 (1) "Claim" means any relief sought in a civil action, 5 including all forms of monetary recovery or injunctive relief. 6 "Claimant" has the meaning assigned by Section 7 (2) 41.001. 8 9 (3) "Expert" means a person who is: (A) giving opinion testimony about 10 the 11 appropriate standard of care for a sport shooting range, an owner or operator of a sport shooting range, or the owner of real property on 12 13 which a sport shooting range is operated, or the causal relationship between the injury, harm, or damages claimed and the 14 alleged departure from the applicable standard of care; and 15 16 (B) qualified to render opinions on the standards and causal relationship described by Paragraph (A) under the Texas 17 Rules of Evidence. 18 (4) "Expert report" means a written report by an 19 20 expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care for 21 operation of a sport shooting range, the manner in which a defendant 22 23 failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed. 24 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

DAMAGES. (a) Except as provided by Subsection (b), a civil action may not be brought against a sport shooting range, the owner or operator of a sport shooting range, 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.

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.

(c) Damages may be awarded, or an injunction may be 19 20 obtained, in a civil action brought under this section if the claimant shows by a preponderance of the evidence, through the 21 testimony of one or more expert witnesses, that the sport shooting 22 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 ordinarily prudent sport shooting range, owner or operator of a 26 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 operated, a claimant shall, not later than the 90th day after the 5 date the original petition was filed, serve on each party or the 6 7 party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each defendant against 8 9 whom a claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each 10 defendant whose conduct is implicated in a report must file and 11 serve any objection to the sufficiency of the report not later than 12 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: (1) awards to the affected defendant attorney's fees 19 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 period specified by Subsection (a) because elements of the report 24 are found deficient, the court may grant one extension of not more 25 than 30 days to the claimant in order to cure the deficiency. If the 26 27 claimant does not receive notice of the court's ruling granting the

extension until after the 90th day after the date the deadline has 1 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 claimant may satisfy any requirement of this section for serving an 5 expert report by serving reports of separate experts regarding 6 7 different defendants or regarding different issues arising from the conduct of a defendant, including issues of liability and 8 9 causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues 10 11 with respect to all defendants or with respect to both liability and causation issues for a defendant. 12 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) <u>Notwithstanding any other law, including Section 43.002</u>
 26 <u>of this code and Chapter 251, Agriculture Code, a</u> [A] municipality
 27 may not adopt regulations relating to:

(1) the transfer, private ownership, keeping,
 transportation, licensing, or registration of firearms,
 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 a7 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;

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

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

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

26 (6) regulate the carrying of a firearm by a person27 other than a person licensed to carry a concealed handgun under

S.B. No. 766 Subchapter H, Chapter 411, Government Code, at a: 1 2 (A) public park; public meeting of a municipality, county, or 3 (B) 4 other governmental body; 5 political rally, parade, official (C) or 6 political meeting; or 7 (D) nonfirearms-related school, college, or professional athletic event; or 8 9 (7) regulate the hours of operation of a sport shooting range, except that the hours of operation may not be more 10 limited than the least limited hours of operation of any other 11 business in the municipality other than a business permitted or 12 13 licensed to sell or serve alcoholic beverages for on-premises 14 consumption. 15 (e) In this section, "sport shooting range" has the meaning assigned by Section 250.001. 16 17 SECTION 6. Subtitle B, Title 7, Local Government Code, is amended by adding Chapter 236 to read as follows: 18 CHAPTER 236. COUNTY REGULATION OF FIREARMS, AMMUNITION, FIREARM 19 20 SUPPLIES, AND SPORT SHOOTING RANGES Sec. 236.001. DEFINITION. In this chapter, "sport shooting 21 range" has the meaning assigned by Section 250.001. 22 23 Sec. 236.002. FIREARMS; SPORT SHOOTING RANGE. Notwithstanding any other law, including Chapter 251, Agriculture 24 Code, a county may not adopt regulations relating to: 25 (1) the transfer, private ownership, keeping, 26 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. Notwithstanding Section 236.002, a county may regulate the 5 discharge of a firearm at an outdoor sport shooting range as 6 7 provided by Subchapter B, Chapter 235. SECTION 7. Subsection Section 8 (a), 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 association or private club that operates a sport shooting range at 12 13 which not fewer than 20 different individuals discharge firearms 14 each calendar year. 15 (2) "Sport[<del>, "sport</del>] shooting range" means a business 16 establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, 17 trap, black powder, target, self-defense, or similar recreational 18 19 shooting. SECTION 8. The change in law made by this Act applies only 20 to a cause of action that accrues on or after the effective date of 21 22 this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before the 23 effective date of this Act, and that law is continued in effect for 24 25 that purpose. SECTION 9. This Act takes effect on September 1, 2011. 26