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(In the Senate - Filed February 17, 2011; February 23, 2011, read first time and referred to Committee on Agriculture and Rural
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        Affairs; March 17, 2011, reported adversely, with favorable Committee Substitute by the following vote: Yeas 3, Nays 0;
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        March 17, 2011, sent to printer.)
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        COMMITTEE SUBSTITUTE FOR S.B. No. 766
                                                                                     By: Estes
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                                       A BILL TO BE ENTITLED
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                                                 AN ACT
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        relating to the liability of a sport shooting range and the
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        regulation of firearms, ammunition, firearm supplies, and sport
        shooting ranges.
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                BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
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                SECTION 1. The heading to Chapter 128, Civil Practice and
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        Remedies Code, is amended to read as follows:
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           CHAPTER 128. LIMITATION ON SUITS AGAINST SPORT SHOOTING RANGE
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                       OR FIREARMS OR AMMUNITION MANUFACTURER, TRADE
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                                      ASSOCIATION, OR SELLER
        SECTION 2. Chapter 128, Civil Practice and Remedies Code, is amended by designating Section 128.001 as Subchapter A, Chapter 128, Civil Practice and Remedies Code, and adding a heading to
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        Subchapter A to read as follows:
        SUBCHAPTER A. SUIT BY GOVERNMENTAL UNIT

SECTION 3. Section 128.001, Civil Practice and Remedies
Code, is amended by amending Subsections (a) and (b) and adding
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        Subsection (f) to read as follows:
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                       In this section:
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                               "Governmental[, "governmental] unit" means:
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        \frac{\text{(A) }[\text{(1)}]}{\text{including a municipality or county; and}} \text{ a political subdivision of the state,}
                               \frac{\overline{(B)}}{\overline{(B)}} [\frac{\overline{(2)}}{\overline{(2)}}] any other agency of government whose
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        authority is derived from the laws or constitution of this state.
                        <u>(2)</u>
                               "Sport shooting range" has the meaning assigned by
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        Section 250.001, Local Government Code.

(b) Except as provided by Subsections [Subsection] (c) and
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        (f), a governmental unit may not bring suit against:
        (1) a firearms or ammunition manufacturer, trade association, or seller for recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the
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        lawful design, manufacture, marketing, or sale of firearms or
        ammunition to the public; or
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                        (2) 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 sport shooting range.
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                 (f) Nothing in this section shall prohibit a governmental
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        unit from bringing an action 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 if the sport shooting range began operation after September 1, 2011, and
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        operates exclusively within the governmental unit's geographical
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        limits, exclusive of the governmental unit's extraterritorial
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        jurisdiction:
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                               for
                                      injunctive
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                                                                   to enforce a valid
                       statute, or regulation; or
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        ordinance,
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                       (2) to require the sport shooting range to comply with
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        generally accepted standards followed in the sport shooting range
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        industry in this state at the time of the sport shooting range's
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        construction.
        SECTION 4. Chapter 128, Civil Practice and Remedies Code, is amended by adding Subchapter B to read as follows:
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By:

Estes

S.B. No. 766

SUBCHAPTER B. CIVIL ACTIONS

Sec. 128.051. DEFINITIONS. In this subchapter:

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"Claim" means any relief sought in a civil action, 2-1 (1)including all forms of monetary recovery or injunctive relief. 2-2 "Claimant" has the meaning assigned by Section 2-3

41.001.

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

about (A) giving opinion testimony about the 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 which a sport shooting range is operated, or the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care; and

(B) qualified to render opinions on the standards and causal relationship described by Paragraph (A) under the Texas

Rules of Evidence.

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

(5) "Sport shooting range" has the meaning assigned by

Section 250.001, Local Government Code.

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 lawful discharge of firearms.

(b) Nothing in this section prohibits a civil action 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 for:

(1) breach of contract for use of the real property on which a sport shooting range is located;
(2) damage or harm to private property caused by the

unlawful discharge of firearms on a sport shooting range;

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

(4) injunctive relief to enforce a valid ordinance,

or regulation. statute,

(c) Damages may be awarded, or an injunction may be obtained, in a civil action brought under this section if the claimant shows by a preponderance of the evidence, through the testimony of one or more expert witnesses, that the sport shooting range, the owner or operator of the sport shooting range, 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, owner or operator of a sport shooting range, or owner of real property on which a sport shooting range is operated in the same or similar circumstances.

Sec. 128.053. EXPERT REPORT. (a) In a suit against a sport shooting range, an owner or operator of a sport shooting range, or the owner of real property on which a sport shooting range is operated, a claimant shall, not later than the 90th day after the date the original petition was filed, 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 date for serving the report may be extended by written agreement of the affected parties. Each defendant whose conduct is implicated in a report must 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. (b) If,

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

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(1) awards to the affected defendant attorney's fees and costs of court incurred by the defendant; and 3 - 13-2

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dismisses the claim with prejudice with respect to the affected defendant.

- (c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one extension of not more than 30 days to the claimant in order to cure the deficiency. 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.
- (d) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section 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. Nothing in this section shall be 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.
- (e) A court shall 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.

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

 SECTION 5. Section 229.001, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:
- (a) Notwithstanding any other law, including Section 43.002 of this code and Chapter 251, Agriculture Code, a [A] municipality may not adopt regulations relating to:
- <u>(1)</u> the ownership, transfer, private keeping, licensing, transportation, or registration of ammunition, or firearm supplies; or
- (2) the discharge of a firearm at a sport shooting
- Subsection (a) does not affect the authority municipality has under another law to:
- (1) require residents or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose;
- regulate the discharge of firearms within the (2)
- 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;
- regulate the use of firearms in the case of an (4)insurrection, riot, or natural disaster if the municipality finds the regulations necessary to protect public health and safety;
- the storage or transportation (5) regulate 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; or
- (6) regulate the carrying of a firearm by a person other than a person licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, at a:
 - public park; (A)
- public meeting of a municipality, county, or (B) other governmental body;
- political rally, parade, or 3-68 (C) 3-69 political meeting; or

C.S.S.B. No. 766 nonfirearms-related school, (D) college,

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professional athletic event.

(e) In this section "sport shooting range" has the meaning

assigned by Section 250.001.

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

COUNTY REGULATION OF FIREARMS, AMMUNITION, FIREARM CHAPTER 236. SUPPLIES, AND SPORT SHOOTING RANGES
TO DEPLIE TO THE THE SHOOTING TANGES
TO DEPLIE TO THE SHOOTING TANGES

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

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

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

(2) the discharge of a firearm at a sport shooting

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range.

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

In this section: (a)

(1) "Association" or "pr<u>ivate club"</u> association or private club that operates a sport shooting range at which not fewer than 20 different individuals discharge firearms each calendar year.

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

SECTION 8. The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of 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 effective date of this Act, and that law is continued in effect for that purpose.

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

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