

By: Estes

S.B. No. 1447

A BILL TO BE ENTITLED

AN ACT

relating to the liability of a sport shooting range.

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

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

SUBCHAPTER B. CIVIL ACTIONS BY PRIVATE PERSONS

SECTION 2. Sections 128.051(3) and (4), Civil Practice and Remedies Code, are amended to read as follows:

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

(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 pursuant to Sections 128.054 or 128.055 to render opinions on the standards or ~~and~~ causal relationship described by Paragraph (A) under the Texas Rules of Evidence.

(4) "Expert report" means a written report by an expert meeting the requirements of Section 128.054 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 ~~[7]~~ and the manner in which a defendant failed to meet

1 the standards, or by an expert meeting the requirements of Section
2 128.055 that provides a fair summary of the expert's opinions as of
3 the date of the report regarding ~~and~~ the causal relationship
4 between that failure and the injury, harm, or damages claimed.

5 SECTION 3. Sections 128.052(b) and (c), Civil Practice and
6 Remedies Code, are amended to read as follows:

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; or

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]~~
21 Subsection (b) only if the claimant shows by a preponderance of the
22 evidence, through the testimony of one or more experts meeting the
23 requirements of Section 128.054 ~~[witnesses]~~, that the sport
24 shooting range, the owner or operator of the sport shooting range,
25 or the owner of real property on which the sport shooting range is
26 operated deviated from the standard of care that is reasonably
27 expected of an ordinarily prudent sport shooting range, owner or

1 operator of a sport shooting range, or owner of real property on
2 which a sport shooting range is operated in the same or similar
3 circumstances and by the testimony of one or more expert witnesses
4 meeting the requirements of Section 128.055 that the alleged
5 deviation from the appropriate standard of care was the cause of the
6 damages asserted. This subsection does not create a cause of
7 action.

8 SECTION 4. Sections 128.053(a), (d), and (e), Civil
9 Practice and Remedies Code, are amended to read as follows:

10 (a) In a suit against a sport shooting range, an owner or
11 operator of a sport shooting range, or the owner of real property on
12 which a sport shooting range is operated, a claimant shall, not
13 later than the 90th day after the date the original petition was
14 filed, serve on each party or the party's attorney one or more
15 expert reports authored by one or more experts meeting the
16 requirements of Sections 128.054 and 128.055, with a curriculum
17 vitae of each expert listed in the report for each defendant against
18 whom a claim is asserted. The date for serving the report may be
19 extended by written agreement of the affected parties. Each
20 defendant whose conduct is implicated in a report must file and
21 serve any objection to the sufficiency of the report not later than
22 the 21st day after the date the report and curriculum vitae are [~~is~~]
23 served or all objections are waived.

24 (d) Notwithstanding any other provision of this section, a
25 claimant may satisfy any requirement of this section for serving an
26 expert report by serving reports of separate experts meeting the
27 requirements of Sections 128.054 or 128.055 regarding different

1 defendants or regarding different issues arising from the conduct
2 of a defendant, including issues of liability and causation.
3 Nothing in this section shall be construed to mean that a single
4 expert must address all liability and causation issues with respect
5 to all defendants or with respect to both liability and causation
6 issues for a defendant.

7 (e) A court shall grant a motion challenging the adequacy of
8 an expert report only if it appears to the court, after a hearing,
9 that the report does not represent an objective, good faith effort
10 to comply with the requirements of an expert report. A court shall
11 find that an expert report served in compliance with Subsection (a)
12 does not represent an objective, good faith effort to comply with
13 the requirements of an expert report if:

14 (1) the expert's curriculum vitae indicates the expert
15 does not meet the requirements of Section 128.054 to offer opinions
16 on the appropriate standard of care for a sport shooting range or
17 that the expert does not meet the requirements of Section 128.055 to
18 offer opinions concerning a causal link between the alleged
19 deviation from the appropriate standard of care and the damages
20 claimed; or

21 (2) the expert report fails to address either the
22 standard of care for a sport shooting range, the alleged breach of
23 the standard of care, or a causal link between the alleged breach
24 and the claimant's damages.

25 SECTION 5. Subchapter B, Chapter 128, Civil Practice and
26 Remedies Code, is amended by adding Sections 128.054 and 128.055 to
27 read as follows:

1 Sec. 128.054. QUALIFICATIONS OF EXPERT WITNESS ON THE
2 STANDARD OF CARE. (a) In a suit involving a claim subject to the
3 requirements of Section 128.053, a person may qualify as an expert
4 witness on the issue of whether the sport shooting range, the owner
5 or operator of a sport shooting range, or the owner of real property
6 on which a sport shooting range is operated departed from the
7 accepted standard of care only if the person:

8 (1) is operating a sport shooting range as defined by
9 Section 250.001, Local Government Code, at the time such testimony
10 is given, or was operating a sport shooting range as defined by
11 Section 250.001, Local Government Code, at the time the claim
12 arose;

13 (2) has knowledge of the accepted standards of care
14 for a sport shooting range of the type involved in the claim; and

15 (3) is qualified on the basis of training or
16 experience to offer an expert opinion regarding those accepted
17 standards of care.

18 (b) As used in this section, "operating a sport shooting
19 range" includes responsibility for, or actual participation,
20 either directly or in a supervisory capacity, in the maintenance
21 and repair of the facility, the supervision of persons shooting on
22 the range, the identification and correction of any safety hazards,
23 and the establishment of rules of conduct and safety procedures for
24 persons using the facility.

25 (c) In determining whether a person has sufficient training
26 or experience to qualify as an expert under this section, the court
27 shall consider whether, at the time the claim arose or at the time

1 the testimony is given, the witness meets the qualification
2 requirements of Subsections (a) and (b) by demonstrating experience
3 with a sport shooting range that is substantially similar to the
4 range against which the claim is asserted with regard to the range's
5 size, the range's location, the population density surrounding the
6 range, and the types of firearms used on the range.

7 (d) This section does not prevent an operator of a sport
8 shooting range who is a defendant from qualifying as an expert.

9 Sec. 128.055. QUALIFICATIONS OF EXPERT WITNESS ON
10 CAUSATION. (a) In a suit involving a claim subject to the
11 requirements of Section 128.053, a person may qualify as an expert
12 witness on the issue of the causal relationship between the alleged
13 departure from the standard of care and the injury, harm, or damages
14 claimed only if the person:

15 (1) is qualified to render opinions on that causal
16 relationship under the Texas Rules of Evidence; and

17 (2) if the claim is based in whole or in part on an
18 allegation that injury, harm, or damages were caused by one or more
19 bullets or other projectiles, demonstrates that the person
20 possesses education, training, and experience in the science of
21 ballistics dealing with the flight, behavior, and effects of
22 bullets and other projectiles launched from a firearm.

23 (b) In a jury trial, the court shall determine an expert's
24 competence to testify about ballistics under Subsection (a)(2)
25 outside the presence of the jury.

26 SECTION 6. The change in law made by this Act applies only
27 to a cause of action that accrues on or after the effective date of

1 this Act. A cause of action that accrues before the effective date
2 of this Act is governed by the law in effect immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

5 SECTION 7. This Act takes effect on September 1, 2017.