

SUBJECT: Limiting legal liability of sport shooting ranges

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 7 ayes — Guillen, Deshotel, Dukes, T. King, Kuempel, Price, T. Smith
0 nays
2 absent — Elkins, Larson

SENATE VOTE: On final passage, March 28 — 31-0

WITNESSES: *(On House companion bill, HB 1595 :)*
For — David Carter; Alice Tripp, Texas State Rifle Association;
(Registered, but did not testify: Tara Mica, National Rifle Association;
Diane Perez; Noe Perez)

Against — None

BACKGROUND: Civil Practices and Remedies Code, ch. 128, added in 1999, prohibits a governmental unit, including a city or county, from bringing a suit against a manufacturer of firearms or ammunition, a trade association, or a seller for recovery of damages, injunctive relief, or abatement of nuisance resulting from the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public.

In 2001, the Legislature enacted HB 1837 by Denny, which prohibited a governmental official from seeking civil or criminal penalties and prohibited a person from filing a lawsuit alleging a noise nuisance against a sport shooting range if no applicable noise ordinance, order, or rule existed. HB 1837 also amended Local Government Code, sec. 250.001, to allow a private club or association, as well as a private business to operate a sport shooting range where firearms can be discharged for silhouette, skeet, trap, black powder, self-defense, or similar recreational shooting.

DIGEST: SB 766 would amend Civil Practices and Remedies Code, sec. 128.001 to limit the ability of local government to file suit against owners or operators of sport shooting ranges or the property owner. The bill also

would require an expert report on whether the sports shooting range met applicable standards before a civil action could be brought.

Suits by government units. SB 766 would prohibit a governmental entity from bring legal actions against a sport shooting range operator or owner or the owner of the real property. However, if the sports shooting range began operations after September 1, 2011, and operated exclusively in the local government's territory, except in its extraterritorial jurisdiction, the local government would be allowed to:

- seek injunctive relief or to enforce a valid ordinance, statute, or regulation; or
- require the sports shooting range to comply with generally accepted industry standards in building the sports shooting range.

SB 766 would prohibit cities from restricting the discharge of firearms at a sports shooting range and prevent them from limiting the hours of operation at the sports shooting range to less than those of any other businesses, except for bars and restaurants with late-hours permits and licenses to sell or serve alcoholic beverages for on-premise consumption.

The bill also would prohibit counties from adopting regulations on the transfer, private ownership, keeping, transportation, licensing or registration of firearms, ammunition, or firearm supplies or on the discharge of firearms at a sports shooting range. The bill would permit counties to continue to regulate outdoor sport shooting ranges on tracts of 10 acres or less in unincorporated areas of the county.

Civil proceedings. SB 766 would prohibit a civil action, except as otherwise provided, from being brought against a sport shooting range or its owner or operator, or the owner of real property on which a sport shooting range operated, for recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the discharge of firearms. The bill would not prohibit civil actions to recover damages for:

- breach of contract for use of the real property where the sports shooting range was located;
- damage or harm to private property caused by the discharge of firearms at a sports shooting range;

- personal injury or death caused by the discharge of a firearm on a sport shooting range; or
- injunctive relief to enforce a valid ordinance, statute, or regulation.

SB 766 would require that anyone bringing suit against the sport shooting range owner or operator or the property owner provide an expert report on applicable industry standards, whether the owner or operator met those standards, and how any failure to do so had a causal relationship to the alleged injury, harm, or damages. The report and a curriculum vitae of the expert would have to be filed with the defendants within 90 days of bringing the legal action, but the date for serving the report could be extended by written agreement of the parties. The defendants would have 21 days to file and serve any objection to the expert report. If the expert report were found to be deficient, the court would be allowed to grant up to a 30-day extension to cure the deficiencies in the report.

If the expert report was not filed, the bill would allow the defendants to ask the court to:

- award attorney fees and court costs to the defendant, and
- dismiss the claim against the defendant with prejudice.

The bill would take effect on September 1, 2011, and would apply only to causes of action accruing on or after that date.

**SUPPORTERS
SAY:**

SB 766 would provide a mechanism to identify sports shooting ranges whose operations needed to be corrected or closed, but would protect those sports shooting ranges who met best practices and accepted industry safety standards. Recently, many frivolous lawsuits have been brought against sports shooting ranges and the property owners, often in an attempt to shut down the range so it could be sold for other development. While most of these actions are groundless and without merit, the cost of defending against frivolous lawsuits can bankrupt these small business owners. SB 766 would extend the same kind of protection from needless litigation to sports shooting ranges as the Legislature provided for firearm manufacturers and dealers.

SB 766 would help address a need to provide more facilities where law-abiding Texans could maintain their firearm skills, whether for self-defense, hunting, competitive shooting, or general recreation. More than 400,000 Texans hold concealed handgun licenses, which require passing a

Department of Public Safety mandated training course to demonstrate proficiency. Hunters need to spend time on the range to maintain skills with rifles and shotguns to ensure ethical and safe hunting practices. In many jurisdictions, law enforcement officers train on private facilities.

**OPPONENTS
SAY:**

SB 766 is unnecessary because of other tort reform measures designed to stop expensive and unnecessary litigation. Enough restrictions exist to sanction those bringing frivolous lawsuits.

NOTES:

The House companion bill, HB 1595 by Isaac, was considered in a public hearing on March 23 and was reported favorably, as substituted, by the Culture, Recreation and Tourism Committee on April 7.