

SUBJECT: Limiting civil and criminal liability of shooting ranges for noise pollution

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Gray, Hilbert, Bosse, Goodman, Nixon, Roman
1 nay — Zbranek
2 absent — Alvarado, Dutton

WITNESSES: *(On original version):*
For — William Carter, Texas Gun Dealers Association; Herbert Chambers and Tara Reilly, National Rifle Association; Dee Day, Eagle Peak Shooting Range; Robert Montserrat and James Nicholson, Texas State Rifle Association; Kay Murphy, Fort Worth Rifle and Pistol Club; Patsy Shelton; Dorland Shelton; Neal Atkins; Charles Wallace

Against — Greg Hipskin, Boy Scouts of America, Capital Area Council; Mary Tripp; David Ward; Mary Ellen Ward; Sandra Elder

On — Scotty Oliver, Texas Parks and Wildlife Department; Mike Slack, Texas Trial Lawyers Association

BACKGROUND : Chapter 756 of the Health and Safety Code regulates the construction of outdoor shooting ranges in counties with populations greater than 150,000. Construction and maintenance standards in these counties must be at least as stringent as the guidelines published by the National Rifle Association (NRA). The Texas Attorney General, however, has stated that the reliance on standards set by the NRA is an unconstitutional delegation of legislative authority. (Op. Atty Gen. DM-159, 1992).

Section 250.001 of the Local Government Code restricts governmental officials from seeking civil or criminal penalties for noise, and private individuals from bringing nuisance actions for noise, against owners of shooting ranges so long as they are in compliance with all applicable municipal and county ordinances and rules regulating noise.

DIGEST: CSHB 601 would relieve owners of sport shooting ranges from any type of

liability or nuisance action related to noise or noise pollution resulting from the range so long as the range complied with any noise regulation at the time it was constructed. Specifically the owner could not be:

- held civilly or criminally liable in any action related to noise;
- subjected to an action for nuisance related to noise;
- enjoined in the operation or use of the range because of noise;
- governed by any local noise regulation adopted after the range began its initial operation; or
- subjected to any state regulation relating to decibel levels in the outdoor atmosphere.

Municipalities could still regulate the location and construction of a shooting range so long as such regulations did not involve noise regulation of an existing range. Actions for negligence or recklessness in the operation of the range not related to noise would not be affected by CSHB 601.

CSHB 601 would repeal the current restriction on local government regulation of sport shooting ranges in sec. 250.001 of the Local Government Code.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house and would apply to any civil or criminal action commenced on or after its effective date.

**SUPPORTERS
SAY:**

Sport shooting ranges — especially those that were once rural and are now in suburban areas — need protection from actions based on noise in order to avoid numerous costly and unnecessary lawsuits. The most prevalent problem with many current suits is that they have been filed by neighbors of ranges who moved in to the area after the range was already in operation. By limiting the liability of ranges for noise and preventing new local noise regulations from affecting existing ranges, providers of these important recreational and law enforcement services would not be under the constant threat of being forced out of business.

Sport shooting ranges provide recreational services to the many Texans who enjoy the constitutional right of owning firearms. Many ranges also run necessary firearms safety classes as well as classes to obtain the handgun

proficiency certificate needed for a concealed handgun license. In numerous areas, local law enforcement departments contract with shooting ranges to use their facilities for firearms training and practice. Without such ranges, law enforcement officials would have to spend additional taxpayer resources to construct and operate firearms training facilities.

CSHB 601 would return the regulation of shooting ranges to the long standing common law principle of “first in time, first in right.” When ranges are in compliance with all applicable noise regulations at the time they are constructed and the neighbors do not object to the construction of the range, it is patently unfair to subject them to constantly changing requirements from local governments and suits from neighbors who move next to an operating range. If a neighbor or governmental body has a problem with a range, those problems should be addressed before the owner makes a substantial investment in the range. Simply waiting until the range is in operation before bringing up any concerns is unfair to the owner who invests time and money in a new range.

Many ranges that have new suburban neighbors have spent millions to make changes and improvements to their ranges to benefit and protect their new neighbors. The sheer cost of such changes, however, prevents the ranges from ever being able to completely satisfy their new neighbors. Many of these ranges are open-air outdoor ranges spanning several acres. Some neighbors of these ranges have demanded that the entire property be completely enclosed to create an indoor range. Not only would such enclosure be prohibitively expensive, but it would also remove an essential characteristic of these ranges in simulating hunting activities.

This bill does not address the liability of ranges regarding anything other than noise. Safety of neighbors is an important concern, and such issues would not be affected in any way by this legislation. Additionally, local government regulation pertaining to shooting ranges for anything other than noise would not be affected.

**OPPONENTS
SAY:**

Current law restricting civil liability and nuisance suits creates a balance in protecting range owners and the public; CSHB 601 would dramatically shift the balance to the shooting range owner’s favor. Currently, governmental officials may not seek civil or criminal penalties for noise, and private

individuals may not bring nuisance actions for noise, against owners of shooting ranges in compliance with applicable municipal and county noise regulations. This law simply requires ranges to keep up with current noise regulations. Any such regulations are open to public debate, and the officials who enact such regulations are subject to being replaced at the next election if a majority of the voters in the area feel they were wrong in creating such regulations.

This legislation would not address the problem created when a range that has been in operation significantly changes the operation due to new ownership or other circumstances. While neighbors may not have had any problems with the operation of the range before it changed ownership, the new operation may create problems that they never considered. For example, a rural range ten years ago may have had only ten customers a day firing pistols and hunting rifles. Today, that range may be in a suburban area, cater to gun classes, and have as many as a hundred customers a day, many of whom may fire much more powerful weapons, often at the same time, increasing the noise level.

CSHB 601 would place too much emphasis on local noise regulations in place at the time the range began operations. Many areas do not or did not have noise control or other zoning ordinances when ranges were originally established. These areas rely heavily on the enforcement of deed restrictions and nuisance actions in preventing owners from using their land in an improper way. This bill would completely eliminate any noise regulation of ranges in these counties for the life of the range.

Ranges are not currently subject to any construction standards. The 1991 statute requiring they conform to NRA guidelines has been ruled unconstitutional by the attorney general. Even if those standards were still in place, the NRA is not an objective body regarding gun issues because its primary mission is to promote the rights of gun owners.

OTHER
OPPONENTS
SAY:

Shooting ranges are inherently dangerous and should be closed or heavily regulated as a matter of public safety. While noise is a significant problem, shooting ranges create other, more serious, problems including stray bullets that enter neighboring property. Any legislation that concerns shooting

ranges should take into consideration the overall problems with shooting ranges.

NOTES:

The committee substitute to HB 601 deleted provisions in the original version stating that the user of a sport shooting range accepts certain risks from noise, discharge of a projectile or shot or malfunctioning equipment. The substitute also would repeal sec. 250.001 of the Local Government Code, the current standard for regulation of sport shooting ranges by local governments.

A related bill, HB 3128 by Naishtat, scheduled for a public hearing in the House Public Safety Committee yesterday, would amend chapter 756 of the Health and Safety Code regulating shooting ranges. It would require the Department of Public Safety to develop model standards for the construction and operation of shooting ranges. It would allow municipalities and counties to regulate shooting ranges to promote public health, safety or welfare. Owners of shooting ranges would be required to obtain a license or permit from the city or county on a periodic basis. License renewal would be required if the range changed ownership or had another material change. HB 3128 would also prohibit the consumption of alcoholic beverages or possession of an open container at a shooting range.