

SUBJECT: Limiting lawsuits against gun or ammunition manufacturers

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Bosse, Janek, Goodman, Hope, Nixon, Smithee, Zbranek
0 nays
1 present, not voting — Dutton
1 absent — Alvarado

SENATE VOTE: On final passage, April 6 — 23-7 (Barrientos, Ellis, Gallegos, Shapleigh, Truan, West, Zaffirini)

WITNESSES: (*On House companion bill, HB 1716:*)
For — Bill Carter, Texas Gun Dealers Association; Jim Daey, Garland Public Shooting Range; Ordie Jones, Texas State Rifle Association; Tara Reilly, National Rifle Association; Dan West, Texas Concealed Handgun Association; H.W. “Sputnik” Strain, Texas Motorcycle Rights Association; H. Sterling Burnett, National Center for Policy Analysis; Peggy Venable, Texas Citizens for a Sound Economy; Gregory Ferris; James Nicholson; Noe Perez
Against — Nina Butts, Texans Against Gun Violence

DIGEST: SB 717 would prohibit 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.

A governmental entity could bring a suit if it were approved in advance by the Legislature in a concurrent resolution or by enactment of a law. The attorney general could bring an action on behalf of the state or any other governmental unit that otherwise would be prohibited by SB 717.

A governmental entity could bring a cause of action for:

- ! breach of contract or warranty;
- ! damage or harm to property owned or leased caused by a defective firearm or ammunition;
- ! personal injury if such a claim arose from a governmental unit's claim for subrogation;
- ! injunctive relief to enforce a valid ordinance, statute, or regulation; or
- ! contribution under proportionate responsibility (joint and several liability) claims.

SB 717 would take effect September 1, 1999, and apply to any cause of action filed before, on, or after that date.

SUPPORTERS
SAY:

One of the most egregious litigation strategies now being pursued throughout the country is the filing of suits on behalf of a governmental body against the manufacturers of legal products. These products are legal to sell and possess, but some governmental entities are attempting to blame these products for the ills of society.

Counties or cities in several states have sued the manufacturers of firearms and ammunition hoping to win "tobacco settlement-like" windfall verdicts worth billions of dollars. A recent Detroit verdict against 35 manufacturers awarded that city \$800 million. Many suits are brought explicitly to cause manufacturers to spend millions of dollars in legal fees or potential settlements that either would drive up the price of guns or would drive the manufacturers out of business. If the Legislature does not address these suits, they could substantially impair Texans' constitutional right to bear arms.

The problem with suits against gun and ammunition manufacturers is that guns are not inherently dangerous if used properly. Only misuse *by people* allows guns to cause harm. Guns are used five times more often to prevent crimes than to commit them. If plaintiffs wish to go after the actual cause of the harm, they should be suing anyone who ever has been arrested or charged with the illegal use of a firearm. However, it would be too costly to sue all those people and, most likely, very few of them would be able to pay any significant verdict. It is much easier to blame the manufacturers and go after their assets.

SB 717 would prohibit the initiation of such suits by local governmental entities in Texas without prior approval by the Legislature. The bill would

make exceptions for suits that allege defective products or to recover damages not related to the legal use of nondefective firearms or ammunition. It also would make an exception for the attorney general to bring suit if that office found it to be in the interest of the state to do so. This legislation would not affect the right of an individual to bring a suit and thus would not in any way violate the open-court provision of the Texas Constitution.

It should be left to the Legislature and not the court system to develop policy for dealing with lawful products. If left unchecked, these lawsuits could damage other lawful industries. Auto manufacturers could be sued for the costs associated with auto accidents, traffic control, and highways. Alcohol producers could be sued for costs of drunk driving and treatment of cirrhosis of the liver, and beef producers could be sued for heart-disease costs.

**OPPONENTS
SAY:**

SB 717 would take away the legal rights of governmental units, particularly cities and counties, to recover the enormous costs attributable to gun violence, including health care, police, and jails. It is wholly appropriate for local governments such as cities and counties to bring such suits because they must deal directly with the consequences when gun manufacturers act irresponsibly. The state should not interfere with local discretion to bring such suits if locally elected officials believe they are justified.

Lawsuits against gun manufacturers would not have a detrimental impact on gun makers. Similar lawsuits against tobacco companies succeeded only after years of litigation, and there is no evidence that tobacco companies are going out of business because of such judgments.

Most of these suits to date have not alleged that guns or ammunition are inherently unsafe, but that manufacturers could take measures to make such products safer. If litigation could force gun makers to increase the safety features on guns, the cost of the litigation would be well worth it. While significant costs are associated with illegal uses of firearms, there are also significant costs from the accidental use of such weapons. Increasing safety features such as child locks and other devices could reduce the number of people injured accidentally.

Another potential benefit of such suits is to stop the manufacture of guns that are used primarily to commit crimes. While any gun could be used in a crime, certain weapons include features that have no benefits except to criminals.

For example, if a gun is used legally, there is no reason for that gun to be fingerprint-resistant. That feature is useful only when someone uses the weapon for an illegal purpose.

Such lawsuits are not frivolous. Even if they were, provisions in current law allow for the dismissal of frivolous lawsuits.