SUBJECT: Preventing noise nuisance lawsuits against sport shooting ranges

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 9 ayes — Ramsay, G. Lewis, B. Brown, Chisum, Farabee, Hilderbran, Krusee, Salinas, Shields

0 nays

WITNESSES: For — Dee Day, Eagle Peek Shooting Range; Jim Day, Garland Public Shooting Range; Greg Ferris, Cedar Ridge Range, Jerry Patterson, Houston Gun Collectors Association and Houston Safari Club; Alice Tripp, Texas State Rifle Association; Dan West, Texas Concealed Handgun Association

Against — None

BACKGROUND: In 1991, the 72nd Legislature enacted HB 962 by Madla, requiring that outdoor shooting ranges be built and maintained according to standards as least as stringent as those published in the National Rifle Association (NRA) range manual. However, Attorney General Opinion DM-159 (August 27, 1992) held that requiring shooting ranges to be built according to NRA standards was "an invalid attempt to confer legislative authority on a private entity in contravention of article III, section 1 of the Texas Constitution."

Under Local Government Code, sec. 250.001, a governmental official may not seek a civil or criminal penalty against a sport shooting range or its owner or operator based on violation of a municipal or county ordinance, order, or rule if the sport shooting range complies with the applicable ordinance, order, or rule. Similarly, a person may not bring a nuisance or similar cause of action against a shooting range based on noise if the shooting range complies with all applicable ordinances, orders, and rules.

In July 1999, a decision by the Third Court of Appeals in Austin (*Day v. Tripp*, No. 03-97-00480-CV) upheld part of a 167th District Court judgment that an outdoor shooting range in rural Travis County owned by Jim and Delores Day was liable to adjoining landowners because of the noise nuisance allegedly caused by the range. The Days contended that Local

Government Code, sec. 250.001 barred the nuisance suit, asserting that since no county or city had decided to regulate noise with an ordinance, order, or rule, their shooting range was in compliance with that decision. The appeals court ruled that the absence of such an enactment did not necessarily reflect a decision, only inaction, by local authorities, so the exemption did not apply. The Texas Supreme Court declined to hear the Days' appeal of the appeals court decision.

DIGEST:

CSHB 1837 would prohibit a governmental official from seeking civil or criminal penalties and would prohibit a person from filing a lawsuit alleging a noise nuisance against a sport shooting range if no applicable noise ordinance, order, or rule existed.

The bill also would amend the definition of a sport shooting range to include a private club or association that operates such a range and would delete the portion of the definition that limits its application to a shooting range that existed on or before the date when the statute first took effect.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. It would apply only to offenses committed or lawsuits filed after the effective date.

SUPPORTERS SAY:

CSHB 1837 would correct legal misinterpretations of Local Government Code, sec. 250.001 as now written. This statute does not permit civil or criminal penalties if a sport shooting range is in compliance with applicable ordinances, orders, or rules. If no noise regulation exists, it makes little sense to hold a range owner liable for not complying with a nonexistent noise ordinance. Range owners could face bankruptcy in defending themselves against frivolous noise complaints encouraged by the legal precedent set by the recent court rulings.

Outdoor shooting ranges typically cannot find appropriate locations in urban areas and must operate in unincorporated or rural areas of counties. Excessive regulation increases these businesses' operating costs and may lead to fewer of these facilities remaining in business to serve Texans.

Owners of shooting ranges must operate safe facilities. Even though Opinion

DM-159 eliminated NRA standards from state law, these guidelines represent recognized industry standards. One of the missions of a shooting range is to teach everyone to handle and shoot firearms safely, and an unsafe range would not stay in business for long.

More than 1.5 million Texans participate in shooting activities. Those who hunt or hold concealed-handgun permits must have access to facilities to practice and to sight their weapons properly. Others also enjoy target practice and sport shooting.

Regulated sport shooting ranges provide a safe environment for the public as well as for those using the facilities. The absence of shooting ranges could encourage people to fire their weapons in open and unprotected areas of the county rather than in places where safety rules are in place and are enforced by range masters.

CSHB 1837 would not preclude counties from seeking authority from the Legislature to regulate noise nuisances or to enact ordinances, orders, or rules governing sport shooting ranges.

OPPONENTS SAY:

CSHB 1837 would leave no restrictions on where sport shooting ranges could be located in unincorporated areas. The Legislature has not authorized counties to pass ordinances to regulate noise nor to regulate land use through zoning. Shooting ranges should be regulated because they can be a nuisance and can pose dangers to adjoining property owners. Opinion DM-159 eliminated what little standard the law contained to protect the public. Unincorporated areas, especially those near larger urban areas, are increasingly developed with population densities that make them unsuitable for outdoor shooting ranges.

CSHB 1837 would remove any remedy for a neighbor by barring a nuisance lawsuit. Even in the absence of county noise regulations, citizens can bring private legal action against a nightclub, foundry, or any other noisy operation near their homes. Shooting ranges should not enjoy special exemptions from being good neighbors, and they should not benefit from exemptions that do not apply to other operations.

The Days had ample opportunity to argue their legal case. Both the district court and the court of appeals rejected their argument about exempting sport shooting ranges, and the Texas Supreme Court declined to consider it. Their interpretation of the statute should not be placed in state law.

This is a health and safety issue concerning outdoor shooting ranges, not a gun rights issue. One can support the Second Amendment avidly and still prefer not to be awakened by the discharge of heavy-caliber weapons at night or to have a stray bullet from a nearby shooting range shatter a window.

NOTES:

HB 1837 as filed referred to ranges that existed before August 26, 1991, the original effective date of Local Government Code, sec. 250.001.

The companion bill, SB 1121 by Armbrister, has been referred to the Senate Intergovernmental Affairs Committee.