

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 412

SPONSOR: Senators Bronson, Garcia and others

SUBJECT: Civil Actions/Firearms and Ammunition

DATE: March 12, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Senate Bill 412 prohibits civil actions against firearms and ammunition manufacturers, distributors, dealers and trade associations by certain governmental entities under certain circumstances. The right to sue the firearms entities for damages, abatement, or injunctive relief resulting from the lawful design, marketing, or sale of firearms to the public is prohibited. The specified entities prohibited from bringing such suits are the state or its agencies and instrumentalities, counties, municipalities, special districts, or other political subdivisions of the state. The bill does not prohibit an individual person from bringing a suit for breach of contract, breach of express warranty, or injuries resulting from a defect in materials or workmanship.

The bill specifically does not prohibit actions against firearms or ammunition manufacturers or dealers for breach of contract or warranty in connection with firearms or ammunition purchased by a county, municipality, special district or other political subdivision or agency of the state. Further, the bill does not prohibit actions for injuries resulting from a firearm or ammunition malfunction due to defects in design or manufacture.

The bill provides a legislative finding that the manufacture, distribution, or sale of firearms and ammunition by duly licensed manufacturers, distributors, or dealers is a lawful activity and is not unreasonably dangerous. The bill also provides that the unlawful use of firearms and ammunition is the proximate cause of injuries arising from their unlawful use, not the lawful manufacture, distribution or sale of firearms and ammunition.

The bill further provides that the potential of a firearm or ammunition to cause serious injury, damage or death as a result of normal function, or when it is discharged legally or illegally, does not constitute a defective condition of the product.

The bill provides for attorney's fees, costs, lost income and expenses for civil actions brought in violation of this section.

This bill creates section 790.331, Florida Statutes.

## II. Present Situation:

Local governments are political subdivisions of the state and have only those rights and powers as provided by the constitution and the Legislature. Article VIII, sections 2(a) and (b) of the Florida Constitution provide that municipalities may be established pursuant to general or special law and that they have governmental, corporate and proprietary powers which may be exercised except as otherwise provided by law. Pursuant to section 1(f) of Article VIII of the constitution, non-charter counties have such power of self-government as provided by general or special law and charter counties, pursuant to section 1(g) of Article VIII of the constitution, have all powers of local self-government not inconsistent with general law or special law approved by vote of the electors.

Currently, there are no state statutes or constitutional provisions which prohibit counties or municipalities from instituting product liability lawsuits, or any other type of legal or equitable action, against firearms manufacturers, dealers or trade associations. However, s. 790.33, F.S., expressly preempts local governmental regulation of firearms and ammunition, with the exception of waiting period ordinances enacted by counties, so as to provide uniform firearms laws in the state.

Generally, products liability encompasses the liability of a manufacturer, processor, or non-manufacturing seller for injury to the person or property of a buyer or third party caused by a product which has been sold in a defective condition. *41A Fla. Jur. 2d Products Liability, s. 1* (1995). Products liability actions may be brought under a variety of theories, including negligence, strict liability, and breach of warranty. *Id.*, at s. 2. However, the manufacturer or seller of a product is not deemed to be an insurer of the safety of the product and a manufacturer is not under a duty to make its product accident-proof. *Tampa Drug Co. v. Wait*, 103 So.2d 603 (Fla. 1958). The concern of products liability law is only to protect the user from the unreasonably dangerous product or one fraught with unexpected danger. *See, Royal v. Black & Decker Mfg. Co.*, 205 So.2d 307 (Fla. 3d D.C.A. 1967).

A product which has obviously and inherently dangerous qualities is not necessarily a defective product under products liability law. *Technology, Inc. v. Ware Construction Co.*, 445 So.2d 329, 331 (Fla. 1983). Florida law holds that "one who is injured while using a perfectly made axe or knife would have no right to a strict liability action against the manufacturer because the product that injured him was not defective." *Cassisi v. Maytag, Co.*, 396 So.2d 1140, 1143 (Fla. 1st D.C.A. 1981). This same principle applies to firearms and, absent proof of injury due to a manufacturing or design defect, firearms manufacturers are not liable under any products liability theory. *See, Trespalacios v. Valor Corp. of Florida*, 486 So.2d 649 (Fla. 3d D.C.A. 1986); *Coulson v. DeAngelo*, 493 So.2d 98 (Fla. 4th D.C.A. 1986).

Additionally, firearms manufacturers and distributors generally have not been subject to liability for the criminal use of firearms. More specifically, the following theories have failed to result in any liability for a firearms manufacturer or distributor:

- (1) Negligence, where the weapon was not defective, the manufacture or distribution of the weapon was not unlawful pursuant to either state or federal law, and neither the manufacturer nor distributor had a duty to prevent the sale of handguns to persons who are likely to cause harm to the public;
- (2) Strict liability in tort, on the basis that the manufacture of a firearm is an ultrahazardous activity;
- (3) Strict liability in tort, where it was argued that the use of a gun solely for criminal acts made the gun a defective product; and
- (4) Strict liability in tort, where there was no proof that the gun was defective, i.e., that it failed to operate as the consumer expected and that the defect was the proximate cause of injury.

*See, Trespalacios; Coulson.*

There has been a recent trend in litigation brought by governmental entities against firearm manufacturers, dealers and associations. As of January 2001, there were lawsuits brought by 33 governmental entities in various stages of litigation around the country.

In Florida, the mayor of Miami-Dade County and the county government filed an action against 26 manufacturers and distributors, 2 dealers and 3 trade associations. The claim was brought on the legal theories of strict liability, negligence, and ultrahazardous activity, alleging defective design and negligent distribution. The lawsuit sought to recover the county's cost of responding to firearm related incidents. The county also sought injunctive relief requiring manufacturers to redesign firearms to incorporate certain safety features, and a declaration that the defendant's business methods create a public nuisance.

That case, *Penelas and Miami-Dade County v. Arms Technology, Inc., et al.*, Case No. 99-1941, was dismissed by the trial court, a ruling that was upheld by the Third District Court of Appeal in an opinion issued on February 14, 2001 (Case No. 3D00-113). The court based its opinion, in large part, on the *Trespalacios* and *Coulson* cases, cited above. In rejecting the county's request for injunctive relief, the court declined to "regulate firearms and ammunition through the medium of the judiciary." *Id.* at pg. 6.

### **III. Effect of Proposed Changes:**

Section 1 of the bill creates s. 790.331, F.S., to specifically prohibit governmental entities from instituting legal proceedings against firearms or ammunition manufacturers, distributors, dealers and trade associations for claims arising or resulting from the lawful design, marketing or sale of firearms or ammunition to the public. Subsection (1) expressly declares that the manufacture, distribution, or sale of firearms and ammunition by manufacturers, distributors, and dealers duly licensed by the appropriate federal and state authorities is a lawful activity and is not unreasonably dangerous. The bill also states that the unlawful use of firearms and ammunition, rather than their lawful manufacture, distribution or sale, is the proximate cause of injuries arising from their unlawful use.

Subsections (2) and (3) set forth the prohibition against certain types of civil actions that may be brought by any state, county, municipality, special district, agency, or political subdivisions of government against firearm or ammunition manufacturers, dealers, distributors, or trade associations. The legal actions that are prohibited are:

- actions for damages
- actions for abatement
- actions seeking injunctive relief

which arise out of the lawful design, marketing, distribution, or sale of firearms or ammunition to the public. Nor may a governmental entity sue for injunctive relief, abatement, or recover damages from a firearm or ammunition manufacturer, distributor, dealer or trade association *in any case* that results from or arises out of the lawful design, marketing, distribution or sale of firearms or ammunition.

The bill specifically does not preclude the following legal actions against a firearm or ammunition manufacturer, trade association, distributor, or dealer, as set forth in subsections (2) – (4):

- an action brought by a natural person for
  - breach of a written contract
  - breach of an express warranty
  - injuries resulting from a defect in the materials or workmanship in the manufacture of a firearm or ammunition,
- an action brought under the theory of breach of contract or warranty in connection with a purchase of a firearm or ammunition by a governmental entity, or
- an action brought for recovery for injuries resulting from the malfunction of a firearm or ammunition due to a design or manufacturing defect.

Subsection (5) provides that, for purposes of this section, the potential of a firearm or ammunition to cause serious injury, damage or death as a result of normal function does not constitute a defective condition of the product. Additionally, a firearm or ammunition may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when discharged legally or illegally. These provisions attempt to clarify that a firearm's or ammunition's intended purpose shall not be considered a defective condition in a products liability lawsuit.

The civil sanctions provided for in subsection (6) include recovery from the governmental entity of all expenses resulting from the bringing of a prohibited action or one in which the court finds the defendant is immune from such suit, plus attorney's fees, costs and compensation for loss of income.

Subsection (7) provides that the bill applies to any action brought on or after the effective date.

Section 2 provides that the bill is effective upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill does not appear to violate the access to courts provisions of the Florida Constitution as governmental entities are not "persons" typically protected by Art. I, s. 21. As stated previously, governmental entities only have those powers expressly given to them in the constitution or statutes and may have any power taken away that is not provided in the constitution. This is especially so when the state preempts a specific area, as it has done with weapons and firearms in ch. 790, F.S.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill could result in a decreased number of lawsuits against manufacturers, distributors, and dealers of firearms and ammunition. However, the precise impact is undeterminable.

**C. Government Sector Impact:**

The bill could result in governmental entities paying sums for attorney's fees, costs, expenses and lost income to defendants if product liability suits are brought in violation of the bill's provisions. No accurate prediction of the impact can be made.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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