

2001 DRAFTING REQUEST

Bill

Received: 12/06/2000

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Mark Pettis (608) 267-2365

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Actions against producers and dealers of firearms or firearm ammunition

Instructions:

See Attached 99-2271 and s0123 and a1230

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 12/08/2000	chanaman 12/19/2000		_____			
/1			martykr 12/20/2000	_____	lrb_docadmin 12/20/2000	lrb_docadmin 01/10/2001	

FE Sent For:

<END>

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1?	nelsorp1	cm 11 12/19	Jan 20	KK 12 Km 20			

FE Sent For:

<END>

ASSEMBLY BILL 246 (LRB-2271)

An Act to create 895.45 of the statutes; relating to: actions against manufacturers, importers, trade associations or dealers of firearms or firearm ammunition.

1999

- 03-25. A. Introduced by Representatives Pettis, Suder, Gundrum, Gunderson, Huebsch, Spillner, Ladwig, Musser, Ainsworth, Hundertmark, Sykora, Grothman, Handrick, Albers, Porter, Kreibich, Kedzie, Seratti, F. Lasee, Leibham, Hutchison, Gronemus, Hahn, Owens, Vrakas, Johnsrud and Nass; cosponsored by Senators Breske, Zien, Welch, Baumgart, Schultz and Fitzgerald.
- 03-25. A. Read first time and referred to committee on Judiciary and Personal Privacy

137

- 05-11. A. Public hearing held .

2000

- 01-27. A. Executive action taken .
- 01-27. A. Assembly substitute amendment 1 offered by committee on Judiciary and Personal Privacy (LRB s0123)

614

- 01-27. A. Assembly amendment 1 to Assembly substitute amendment 1 offered by committee on Judiciary and Personal Privacy (LRB a1230) X

614

- 02-01. A. Report Assembly amendment 1 to Assembly substitute amendment 1 adoption recommended by committee on Judiciary and Personal Privacy, Ayes 5, Noes 4

620

- 02-01. A. Report Assembly substitute amendment 1 adoption recommended by committee on Judiciary and Personal Privacy, Ayes 5, Noes 4

620

- 02-01. A. Report passage as amended recommended by committee on Judiciary and Personal Privacy, Ayes 5, Noes 4 ..

620

- 02-01. A. Referred to committee on Rules

620

- 02-01. A. Placed on calendar 2-3-2000 by committee on Rules .
- 02-03. A. Read a second time

637

- 02-03. A. Assembly amendment 1 to Assembly substitute amendment 1 adopted

637

- 02-03. A. Point of order that Assembly substitute amendment 1 not germane taken under advisement

637

- 02-03. A. Chair ruled point of order that Assembly substitute amendment 1 not germane not timely

a 1276

83292788.txt

- 638 02-03. A. Assembly amendment 2 to Assembly substitute amendment 1 offered by Representatives Gundrum and Pettis (LRB a1286) k
- 638 02-03. A. Assembly amendment 2 to Assembly substitute amendment 1 adopted, Ayes 70, Noes 26
- 638 02-03. A. Motion to reconsider vote by which Assembly amendment 2 to Assembly substitute amendment 1 was adopted offered by Representative Travis (LRB)
- 639 02-03. A. Point of order that Assembly substitute amendment 1 not germane not well taken
- 639 02-03. A. Assembly substitute amendment 1 adopted, Ayes 73, Noes 24 ✓
- 639 02-03. A. Motion to reconsider vote by which Assembly substitute amendment 1 was adopted offered by Representative Travis (LRB)
- 639 02-03. A. Ordered to a third reading
- 639 02-03. A. Refused to suspend rules to read a third time, Ayes 54, Noes 43
- 639 02-03. A. Motion for reconsideration of the vote by which ordered to a third reading offered by Representative Travis
- 639 02-08. A. Refused to reconsider vote by which ordered to a third reading, Ayes 33, Noes 64
- 648 02-08. A. Read a third time and passed, Ayes 75, Noes 21
- 648 02-08. A. Motion to reconsider vote by which passed offered by Representative Travis
- 649 02-10. A. Refused to reconsider vote by which passed, Ayes 24, Noes 72
- 662 02-16. S. Received from Assembly
- 440 02-16. S. Read first time and referred to committee on Judiciary and Consumer Affairs
- 440 04-06. S. Failed to concur in pursuant to Senate Joint Resolution 1
- 583

1999 ASSEMBLY BILL 246

March 25, 1999 - Introduced by Representatives PETTIS, SUDER, GUNDRUM, GUNDERSON, HUEBSCH, SPILLNER, LADWIG, MUSSER, AINSWORTH, HUNDERTMARK, SYKORA, GROTHMAN, HANDRICK, ALBERS, PORTER, KREIBICH, KEDZIE, SERATTI, F. LASEE, LEIBHAM, HUTCHISON, GRONEMUS, HAHN, OWENS, VRAKAS, JOHNSRUD and NASS, cosponsored by Senators BRESKE, ZIEN, WELCH, BAUMGART, SCHULTZ and FITZGERALD. Referred to Committee on Judiciary and Personal Privacy.

1 AN ACT to create 895.45 of the statutes; relating to: actions against
2 manufacturers, importers, trade associations or dealers of firearms or firearm
3 ammunition.

Analysis by the Legislative Reference Bureau

This bill prohibits the state and cities, villages, towns and counties, and departments, divisions, boards and agencies of these units of government, from bringing an action against a person who imports, manufactures or deals in firearms or in firearm ammunition or against a firearm trade association for any damages or for injunctive relief relating to the lawful design, manufacture, marketing or sale of firearms or firearm ammunition. The bill does not prevent these units of government from suing the importers, manufacturers, dealers or trade associations for a breach of a warranty or contract for firearms or firearm ammunition purchased by the unit of government.

The bill also grants firearm importers, manufacturers, dealers and trade associations immunity from civil liability in any action brought by an individual or group for an injury or death caused by a firearm or by firearm ammunition. However, this immunity does not apply to an injury or death that was caused by a defective firearm or by defective firearm ammunition. In addition, the immunity does not apply if the injury or death was caused by a firearm or firearm ammunition that was

ASSEMBLY BILL 246

manufactured or sold with a wilful or wanton disregard for the safety of the individual or group.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.45 of the statutes is created to read:

2 **895.45 Actions against firearm or firearm ammunition dealers or**
3 **firearm trade associations. (1) In this section:**

4 ^{out} (a) "Defective" means failing to perform in a reasonably safe and suitable
5 manner the particular use for which the product was manufactured.

6 (b) "Firearm" means a weapon that acts by force of gunpowder.

7 (c) "Firearm dealer" means any person engaged in the business of importing,
8 manufacturing or dealing in firearms and having a license as an importer,
9 manufacturer or dealer issued by the U.S. department of the treasury.

10 (d) "Firearm trade association" means a national or statewide trade association
11 that derives income from membership dues of firearm dealers.

12 (e) "Political subdivision" means a city, village, town or county.

13 **(2) The state, a political subdivision, and every department, division, board or**
14 **agency of the state or of a political subdivision, may not bring an action against a**
15 **firearm dealer, firearm trade association or a manufacturer, importer or dealer of**
16 **firearm ammunition for damages resulting from or injunctive relief relating to the**
17 **lawful design, manufacture, marketing or sale to the public of firearms or firearm**
18 **ammunition.**

19 **(3) Subsection (2) does not prohibit the state, a political subdivision, or a**
20 **department, division, board or agency of the state or of a political subdivision, from**
21 **bringing an action against a firearm dealer, firearm trade association or a**

ASSEMBLY BILL 246

1 manufacturer, importer or dealer of firearm ammunition for breach of contract or
2 warranty as to firearms or firearm ammunition purchased by the state, a political
3 subdivision, or by a department, division, board or agency of the state or of a political
4 subdivision.

5 (4) The court shall dismiss any action commenced or pending that is prohibited
6 by sub. (2).

7 (5) (a) A firearm dealer, firearm trade association or a manufacturer, importer
8 or dealer of firearm ammunition is immune from civil liability in any action brought
9 by an individual or group for an injury or death caused by a firearm or by firearm
10 ammunition.

11 (b) The immunity under par. (a) does not apply to an injury or death that was
12 caused by a defective firearm or defective firearm ammunition or by a firearm or
13 firearm ammunition that was manufactured or sold with a wilful or wanton
14 disregard for the safety of the individual or group.

15 **SECTION 2. Initial applicability.**

16 (1) The treatment of section 895.45 (5) of the statutes first applies to actions
17 commenced on the effective date of this subsection.

18 (END)

D-NOTE

- 1351
LRB 12312
RPN:cmh:kjf
↑
stays

2001 BILL

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 246**

January 27, 2000 - Offered by COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY.

refer out

1 AN ACT to create 895.45 of the statutes; relating to: actions against sport
2 shooting range owners or operators, ^{against} gun or sportsmen's clubs, and against
3 manufacturers, importers, trade associations, or dealers of firearms, firearm
4 components, or firearm ammunition.

Insert
A.L.

→
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 895.45 of the statutes is created to read:

6 895.45 Actions against sport shooting range owners or operators, gun
7 or sportsmen's clubs, ^{or} firearm or firearm ammunition dealers, or firearm
8 trade associations. (1) In this section: B

9 (a) "Firearm" means a weapon that acts by force of gunpowder.

10 (b) "Firearm dealer" means any person engaged in the business of importing,
11 manufacturing, or dealing in firearms or firearm components and having a license as
12 an importer, manufacturer, or dealer issued by the U.S. department of the treasury.

1 (c) "Firearm trade association" means a national or statewide trade association
2 that derives income from membership dues of firearm dealers.

3 (d) "Local governmental unit" means a city, village, town, county, or school
4 district.

5 (e) "Sport shooting range" has the meaning given in s. 895.527 (1). ✓

6 (2) The state, a local governmental unit, and every department, division, board,
7 or agency of the state or of a local governmental unit, may not bring an action or
8 proceeding against a firearm dealer, ^(a) firearm trade association, ~~or~~ a manufacturer,
9 importer, or dealer of firearm ammunition ^{insert 2-9} for damages resulting from, or injunctive
10 relief relating to, the design, distribution, manufacture, marketing, or sale of
11 firearms, firearm components, or firearm ammunition ^(a) or ~~under~~ any nuisance theory.

12 (3) Subsection (2) does not prohibit the state, a local governmental unit, or a
13 department, division, board, or agency of the state or of a local governmental unit,
14 from bringing an action or proceeding against a firearm dealer, ^(a) firearm trade
15 association, or a manufacturer, importer, or dealer of firearm ammunition:

16 (a) For breach of contract or warranty as to a firearm, firearm component, or
17 firearm ammunition purchased by the state, ^(b) a local governmental unit, or by a
18 department, division, board, or agency of the state or of a local governmental unit.

19 (b) Related to a firearm, firearm component, or firearm ammunition that was
20 designed, distributed, manufactured, marketed, or sold in violation of a state or
21 federal law that could result in a criminal penalty or civil forfeiture. An action or
22 proceeding that is permitted under this paragraph may be brought only against a
23 person who violated a state or federal law that could result in a criminal penalty or
24 civil forfeiture and only if the harm giving rise to the action or proceeding was
25 proximately caused by the person's violation of a state or federal law that could result

(1) in a criminal penalty or civil forfeiture. The fact that a firearm, firearm component,
 (2) or firearm ammunition was designed, distributed, manufactured, or sold in violation
 3 of a state or federal law that could result in a criminal penalty or civil forfeiture must
 4 be shown by clear and convincing evidence.

5 (4) The court shall dismiss any action or proceeding commenced or pending
 6 that is prohibited by sub. (2).

(7) (5) (a) A firearm dealer, firearm trade association or a manufacturer, importer,
 (8) or dealer of firearm ammunition ~~gun or sportsmen's club or a sport shooting range~~
 9 ~~owner or operator~~ is immune from civil liability in any action or proceeding brought
 10 by an individual or group for an injury or death caused by a firearm, firearm
 11 component, or firearm ammunition. (a)

insert 3-16 (12) (b) No injunctive relief may be granted against a firearm dealer, firearm trade
 13 association, or a manufacturer, importer, or dealer of firearm ammunition ~~against a~~
 14 ~~gun or sportsmen's club or against a sport shooting range owner or operator~~ in any
 15 action or proceeding brought by an individual or group for an injury or death caused
 16 by a firearm, a firearm component, or firearm ammunition.

(c) The immunity under par. (a) does not apply to any of the following:

18 1. An injury or death caused by the negligent handling of a firearm, a firearm
 19 component, or firearm ammunition by an individual covered under par. (a) if, at the
 20 time of the act or omission that constitutes the negligent handling, the individual is
 21 in actual physical possession of the firearm, firearm component, or firearm
 22 ammunition.

insert 3-16 (23) 2. An injury or death caused by a firearm, a firearm component, or firearm
 24 ammunition that an individual covered under par. (a) uses in violation of a state or
 25 federal law that could result in a criminal penalty or civil forfeiture or that an

1 individual covered under par. (a) uses while committing another act that violates a
2 state or federal law that could result in a criminal penalty or civil forfeiture.

3 (d) The immunity under par. (a) and the prohibition under par. (b) do not apply
4 to any of the following:

5 1. An injury or death that was caused by a defect in the workmanship or
6 materials of a firearm, a firearm component, or firearm ammunition.

7 2. An injury or death that was caused by a firearm, firearm component, or
8 firearm ammunition that was manufactured or sold in violation of a state or federal
9 law that could result in a criminal penalty or civil forfeiture. An action or proceeding
10 that is permitted under this subdivision may be brought only against a person who
11 violated a state or federal law that could result in a criminal penalty or civil forfeiture
12 and only if the harm giving rise to the action or proceeding was proximately caused
13 by the person's violation of a state or federal law that could result in a criminal
14 penalty or civil forfeiture. The fact that the firearm, firearm component, or firearm
15 ammunition was manufactured or sold in violation of a state or federal law that could
16 result in a criminal penalty or civil forfeiture must be shown by clear and convincing
17 evidence.

18 **SECTION 2. Initial applicability.**

19 (1) The treatment of section 895.45 (5) of the statutes first applies to actions
20 or proceedings commenced on the effective date of this subsection.

21 (END)

insert anl:

Analysis by the Legislative Reference Bureau

This bill prohibits the state, ~~and~~ cities, villages, towns, counties, and school districts, and departments, divisions, boards, and agencies of these units of government, from bringing an action against a person who imports, manufactures, or deals in firearms, firearm components, or firearm ammunition or against a firearm trade association, gun or sportsman's club, or ~~a~~ sport shooting range owner or operator, under a nuisance theory or for damages or injunctive relief relating to the design, distribution, manufacture, marketing, or sale of firearms, firearm components, or firearm ammunition. The bill does not prevent these units of government from suing the importers, manufacturers, dealers, trade associations, clubs, or ranges for a breach of a warranty or contract for firearms, firearm components, or firearm ammunition purchased by the unit of government or for the design, distribution, manufacture, marketing, or sale of firearms, firearm components, or firearm ammunition in violation of a state or federal law that could result in a civil or criminal penalty.

The bill grants firearm importers, manufacturers, dealers, and trade associations immunity from civil liability in any action brought by an individual or group for an injury or death caused by a firearm, firearm component, or ~~by~~ firearm ammunition. Immunity from civil liability is ~~also granted~~ to gun or sportsman's clubs and sport shooting range owners or operators for an injury or death caused by a firearm, firearm component, or firearm ammunition if the action is based on the club's or range's participation in the distribution, marketing, sale, or other transfer of a firearm, firearm component, or firearm ammunition.

These immunities do not apply if the injury or death was caused by any of the following:

1. A defect in the workmanship or materials of a firearm, firearm component, or firearm ammunition.
2. A firearm, firearm component, or firearm ammunition that was manufactured or sold in violation of a state or federal law that could result in a civil or criminal penalty.
3. The negligent handling of a firearm, firearm component, or firearm ammunition if the negligent handling was by a firearm importer, manufacturer, dealer, or trade association, ~~or~~ gun or sportsman's club, or sport shooting range owner or operator in actual physical possession of the firearm, firearm component, or firearm ammunition.
4. A firearm, firearm component, or firearm ammunition that a firearm importer, manufacturer, dealer, or trade association, ~~or~~ gun or sportsman's club, or sport shooting range owner or operator used in violation of a state or federal law that could result in a civil or criminal penalty or used while committing another act that violates a state or federal law that could result in a civil or criminal penalty.

The bill also prohibits a person from bringing an action for an injunction against a firearm importer, manufacturer, dealer, or trade association, gun or sportsman's club, or sport shooting range owner or operator in any action for an injury or death caused by a firearm, firearm component, or firearm ammunition. This prohibition does not apply if ^(k) the injury or death was caused by any of the following:

1. A defect in the workmanship or materials of a firearm, firearm component, or firearm ammunition.
 2. A firearm, firearm component, or firearm ammunition that was manufactured or sold in violation of a state or federal law that could result in a civil or criminal penalty.
-

*Insert
2-9*

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1, ...
TO 1999 ASSEMBLY BILL 246**

January 27, 2000 - Offered by COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 2, line 9: after "ammunition" insert , a gun or sportsman's club, or a
3 sport shooting range owner or operator ↑

4 (END)

**ASSEMBLY AMENDMENT 2,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 246**

*Insert
3-11*

February 3, 2000 - Offered by Representatives GUNDRUM and PETTIS.

1 At the locations indicated, amend the substitute amendment as follows:

2 ✓ 1. Page 3, line 7: after "(a)" insert "1."

3 2. Page 3, line 8: delete the material beginning with ", a" and ending with
4 "operator" on line 9.

5 3. Page 3, line 11: after that line insert:

6 2. A gun or sportsmen's club or a sport shooting range owner or operator is
7 immune from civil liability in any action or proceeding that is brought by an
8 individual or group for an injury or death caused by a firearm, firearm component,
9 or firearm ammunition, if the action or proceeding is based on the participation by
10 the gun or sportsmen's club or the sport shooting range owner or operator in the
11 distribution, marketing, sale, or other transfer of the firearm, firearm component, or
12 ammunition.

(END of insert)

Insert 3-16

1 **4.** Page 3, line 12: after "(b)" insert "1."

2 **5.** Page 3, line 13: delete the material beginning with ", against" and ending
3 with "operator" on line 14.

4 **6.** Page 3, line 16: after that line insert:

5 ~~2.~~ ⁽¹⁾ No injunctive relief may be granted against a gun or sportsmen's club or
6 against a sport shooting range owner or operator in any action or proceeding brought
7 by an individual or group for an injury or death caused by a firearm, a firearm
8 component, or firearm ammunition, if the action or proceeding is based on the
9 participation by the gun or sportsmen's club or the sport shooting range owner or
10 operator in the distribution, marketing, sale, or other transfer of the firearm, firearm
11 component, or ammunition.

(END)

end of insert

12

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1351/?dn

.....

*RON
cm H*

This draft combines 1999 Assembly Substitute Amendment 1 to 1999 Assembly Bill 246 with Assembly Amendments 1 and 2 to that substitute amendment. OK?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1351/1dn
RPN:cmh:km

December 20, 2000

This draft combines 1999 Assembly Substitute Amendment 1 to 1999 Assembly Bill 246 with Assembly Amendments 1 and 2 to that substitute amendment. OK?

Robert P. Nelson
Senior Legislative Attorney
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E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

December 20, 2000

MEMORANDUM

To: Representative Pettis

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-1351 Actions against producers and dealers of firearms or firearm ammunition

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY _____ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.