

2005 ASSEMBLY BILL 56

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

Analysis by the Legislative Reference Bureau

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 sportsman’s clubs, firearm or firearm ammunition dealers, or firearm**
8 **trade associations. (1)** In this section:
9 (a) “Firearm” means a weapon that acts by force of gunpowder.

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1 (b) “Firearm dealer” means any person engaged in the business of importing,
2 manufacturing, or dealing in firearms or firearm components and having a license
3 as an importer, a manufacturer, or a dealer issued by the U.S. department of justice.

4 (c) “Firearm trade association” means a national or statewide trade association
5 that derives income from membership dues of firearm dealers.

6 (d) “Local governmental unit” means a city, village, town, county, or school
7 district.

8 (e) “Sport shooting range” has the meaning given in s. 895.527 (1).

9 **(2)** The state, a local governmental unit, and every department, division,
10 board, or agency of the state or of a local governmental unit, may not bring an action
11 against a firearm dealer, a firearm trade association, a manufacturer, an importer,
12 or a dealer of firearm ammunition, a gun or sportsman’s club, or a sport shooting
13 range owner or operator for damages resulting from, or equitable relief relating to,
14 the design, distribution, manufacture, marketing, or sale of firearms, firearm
15 components, or firearm ammunition or under any nuisance theory.

16 **(3)** Subsection (2) does not prohibit the state, a local governmental unit, or a
17 department, division, board, or agency of the state or of a local governmental unit,
18 from bringing an action against a firearm dealer, a firearm trade association, or a
19 manufacturer, an importer, or a dealer of firearm ammunition:

20 (a) For breach of contract or express warranty as to a firearm, a firearm
21 component, or firearm ammunition purchased by the state, by a local governmental
22 unit, or by a department, division, board, or agency of the state or of a local
23 governmental unit.

24 (b) Related to a firearm, a firearm component, or firearm ammunition that was
25 designed, distributed, manufactured, marketed, or sold in violation of a state or

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1 federal law that could result in a criminal penalty or civil forfeiture. An action that
2 is permitted under this paragraph may be brought only against a person who
3 violated a state or federal law that could result in a criminal penalty or civil forfeiture
4 and only if the harm giving rise to the action was proximately caused by the person's
5 violation of a state or federal law that could result in a criminal penalty or civil
6 forfeiture. The fact that a firearm, a firearm component, or firearm ammunition was
7 designed, distributed, manufactured, or sold in violation of a state or federal law that
8 could result in a criminal penalty or civil forfeiture must be shown by clear and
9 convincing evidence.

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

12 (5) (a) 1. A firearm dealer, a firearm trade association, or a manufacturer, an
13 importer, or a dealer of firearm ammunition is immune from civil liability in any
14 action for an injury or death caused by a firearm, a firearm component, or firearm
15 ammunition.

16 2. A gun or sportsman's club or a sport shooting range owner or operator is
17 immune from civil liability in any action for an injury or death caused by a firearm,
18 a firearm component, or firearm ammunition, if the action is based on the
19 participation by the gun or sportsman's club or the sport shooting range owner or
20 operator in the distribution, marketing, sale, or other transfer of the firearm, firearm
21 component, or ammunition.

22 (b) 1. No equitable relief may be granted against a firearm dealer, a firearm
23 trade association, or a manufacturer, an importer, or a dealer of firearm ammunition
24 in any action for an injury or death caused by a firearm, a firearm component, or
25 firearm ammunition.

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1 2. No equitable relief may be granted against a gun or sportsman's club or
2 against a sport shooting range owner or operator in any action for an injury or death
3 caused by a firearm, a firearm component, or firearm ammunition, if the action is
4 based on the participation by the gun or sportsman's club or the sport shooting range
5 owner or operator in the distribution, marketing, sale, or other transfer of the
6 firearm, firearm component, or ammunition.

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

8 1. An injury or death caused by the negligent handling of a firearm, a firearm
9 component, or firearm ammunition by an individual covered under par. (a) if, at the
10 time of the act or omission that constitutes the negligent handling, the individual is
11 in actual physical possession of the firearm, firearm component, or firearm
12 ammunition.

13 2. An injury or death caused by a firearm, a firearm component, or firearm
14 ammunition that an individual covered under par. (a) uses in violation of a state or
15 federal law that could result in a criminal penalty or civil forfeiture or that an
16 individual covered under par. (a) uses while committing another act that violates a
17 state or federal law that could result in a criminal penalty or civil forfeiture.

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

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

22 2. An injury or death that was caused by a firearm, a firearm component, or
23 firearm ammunition that was manufactured or sold in violation of a state or federal
24 law that could result in a criminal penalty or civil forfeiture. An action that is
25 permitted under this subdivision may be brought only against a person who violated

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1 a state or federal law that could result in a criminal penalty or civil forfeiture and
2 only if the harm giving rise to the action was proximately caused by the person's
3 violation of a state or federal law that could result in a criminal penalty or civil
4 forfeiture. The fact that the firearm, firearm component, or firearm ammunition was
5 manufactured or sold in violation of a state or federal law that could result in a
6 criminal penalty or civil forfeiture must be shown by clear and convincing evidence.

7 **SECTION 2. Initial applicability.**

8 (1) This act first applies to actions commenced on the effective date of this
9 subsection.

10 (END)