

2005 ASSEMBLY BILL 56

January 27, 2005 – Introduced by Representatives PETTIS, SUDER, ALBERS, J. FITZGERALD, FREESE, GUNDERSON, GUNDRUM, HAHN, HINES, JENSEN, KESTELL, F. LASEE, McCORMICK, MONTGOMERY, MUSSER, NASS, NERISON, OTT, VOS and VRAKAS, cosponsored by Senators KEDZIE, GROTHMAN, LEIBHAM, KANAVAS, KAPANKE, A. LASEE and REYNOLDS. Referred to Committee on Judiciary.

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

This bill prohibits the state, 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 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 for an injury or death caused by a firearm, a firearm component, or firearm ammunition. Immunity from civil

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liability is granted also to gun or sportsman's clubs and sport shooting range owners or operators for an injury or death caused by a firearm, a 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, a 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, a firearm component, or firearm ammunition.

2. A firearm, a 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, a firearm component, or firearm ammunition if the negligent handling was by a firearm importer, manufacturer, dealer, or trade association, 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, a firearm component, or firearm ammunition that a firearm importer, manufacturer, dealer, or trade association, 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, a firearm component, or firearm ammunition. This prohibition does 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, a firearm component, or firearm ammunition.

2. A firearm, a 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.

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 sport shooting range owners or operators, gun**
3 **or sportsman's clubs, firearm or firearm ammunition dealers, or firearm**
4 **trade associations. (1)** In this section:

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1 (a) “Firearm” means a weapon that acts by force of gunpowder.

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

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

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

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

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

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

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

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

12 **(4)** The court shall dismiss any action commenced or pending that is prohibited
13 by sub. (2).

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

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

24 (b) 1. No injunctive relief may be granted against a firearm dealer, a firearm
25 trade association, or a manufacturer, an importer, or a dealer of firearm ammunition

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1 in any action for an injury or death caused by a firearm, a firearm component, or
2 firearm ammunition.

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

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

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

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

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

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

24 2. An injury or death that was caused by a firearm, a firearm component, or
25 firearm ammunition that was manufactured or sold in violation of a state or federal

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1 law that could result in a criminal penalty or civil forfeiture. An action that is
2 permitted under this subdivision may be brought only against a person who violated
3 a state or federal law that could result in a criminal penalty or civil forfeiture and
4 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 the firearm, firearm component, or firearm ammunition was
7 manufactured or sold in violation of a state or federal law that could result in a
8 criminal penalty or civil forfeiture must be shown by clear and convincing evidence.

9 **SECTION 2. Initial applicability.**

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

12 (END)