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Gun Industry Liability: Lawsuits and Legislation

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Summary

A number of cities have recently filed suit or plan to file suit against gun manufacturers and gun marketers. These suits are based on different legal theories, but they all seek to recover the cities' expenses resulting from the use of guns. About 20 states, however, are considering legislation to prevent their cities from suing the gun industry, and, on February 9, 1999, Georgia became the first state to enact such a law. Members of the 106th Congress, meanwhile, have introduced bills to permit and to preclude suits against the gun industry.

History: Maryland and D.C.

In 1985, the Maryland Court of Appeals announced that it was changing the common law "to hold the manufacturers and marketers of Saturday Night Special handguns strictly liable to innocent persons who suffer gunshot injuries from the criminal use of their products." *Kelley v. R.G. Industries, Inc.*, 497 A.2d 1143, 1159 (Md. 1985). This ruling changed the common law in that the common law holds manufacturers and sellers strictly liable (liable without regard to negligence) for injuries caused by products only if they are *defective*, whether in their manufacture, their design (in that a safer version of the product was feasible at the time of manufacture), or because of a failure to warn users of the product's hazards. Saturday Night Specials, in general, were not defective in any of these senses. The Maryland legislature, however, overturned the court decision, and Maryland Annotated Code Article 27, § 36-I(h) now prohibits liability except in traditional circumstances or if the defendant conspired with or willfully aided or abetted the criminal who used the firearm.

The District of Columbia City Council, by contrast, enacted the Assault Weapon Manufacturing Strict Liability Act of 1990, D.C. Code § 6-2392, providing: "Any manufacturer, importer, or dealer of an assault weapon or machine gun shall be held strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District of Columbia." This statute remains in effect, but apparently has never been used.

For information on lawsuits in other jurisdictions, see Annotation: *Handgun Manufacturer's or Seller's Liability for Injuries Caused to Another by Use of Gun in Committing Crime*, 44 ALR4th 595.

Suits by Cities

The cities of Atlanta, Boston, Bridgeport, Chicago, Miami, New Orleans, New York, Newark, and Philadelphia are among those that have recently filed suit or plan to file suit against gun manufacturers and gun marketers. These suits are based on different legal theories, but they all seek to recover the cities' expenses resulting from the use of guns. The expenses sought vary among the lawsuits, but include the costs of medical treatment for victims of gunshot wounds, additional police protection, washing blood off the streets, counseling survivors of murder victims, decreased property values, and other things.

The lawsuits, in general, do not seek to change the common law, as Maryland (briefly) and D.C. did, by holding defendants strictly liable for non-defective products. Rather, they are based on traditional legal theories, such as design defect, negligent marketing, public nuisance, and violating local anti-gun laws. The design defect claims allege that guns are manufactured either without adequate locking or "personalizing" devices that would prevent children or other unauthorized users from firing them. The negligent marketing claims allege, among other things, that guns are sold to "straw purchasers," who purchase guns not for themselves but for someone, such as a convicted felon, who is disqualified from buying a gun.

Although the legal theories behind the cities' gun suits are not necessarily unprecedented, the fact that cities, rather than individuals, are bringing these suits is generally unprecedented, though the cities' gun suits were, as the Wall Street Journal (March 12, 1999) noted, "indisputably spawned" by the states' suits against the tobacco industry. For additional information on the cities' gun suits, a forthcoming law review article, *City Lawsuits Against the Gun Industry*, by Brian J. Siebel, is available at <http://www.handguncontrol.org/c-main.htm>

States' Response to the Cities' Suits

A Pennsylvania legislator, according the Associated Press (March 19, 1999), plans to introduce a bill to make Pennsylvania "the first state to consider giving its cities a guaranteed right to sue the gun industry for product liability." Another Pennsylvania legislator, however, has filed legislation to prohibit political subdivisions from bringing such suits, and about 20 other states are also considering legislation to prevent their cities from suing the gun industry. On February 9, 1999, Georgia became the first state to enact such a law; its H.B. 189 provides: "The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association, or dealer by or on behalf of any governmental unit . . . shall be reserved exclusively to the state."

A bill introduced in Florida would make it a crime punishable by up to five years in prison and a \$5,000 fine for any local government official to file suit against a gun manufacturer.

Congress's Response

H.R. 1032, 106th Congress, the Firearms Heritage Protection Act of 1999, would prohibit any pending or future “qualified civil liability action” from being brought in any federal or state court. It would define such an action as a civil action brought against a manufacturer or seller of a firearm or ammunition, or a component part of either product, “for damages resulting from the criminal or unlawful misuse” of the product. It would allow such a suit only if the defendant had already been convicted of transferring a firearm with knowledge that it would be used to commit a violent crime.

H.R. 1049, 106th Congress, the Firearms Industry Responsibility Enforcement Act, would create a federal cause of action that could be brought by anyone “damaged because of the discharge of a firearm . . . against the manufacturer, distributor, or retailer of the firearm if the firearm had been in interstate commerce and the manufacturer, distributor, or retailer was negligent in its manufacture, distribution, or sale.” The plaintiff in such an action could sue not only on his own behalf but “on behalf of the political subdivision of a State and the State in which such individual resides to recover the medical and law enforcement costs of the State or political subdivision arising out of the discharge in the State or political subdivision of firearms.” The latter damages would be paid to the state or political subdivision. Note that the damages sought on behalf of a state or political subdivision would be medical and law enforcement costs arising out of the discharge of “firearms,” in the plural. This suggests that a single plaintiff could recover, for a state or political subdivision, all the medical and law enforcement costs arising out of the discharge of all firearms that the defendant had negligently manufactured, distributed, or sold. If a plaintiff recovered these costs, then a subsequent plaintiff presumably could recover from the same defendant only such costs as arose from the defendant’s negligence after the injury to the first plaintiff.

H.R. 1086, 106th Congress, the Gun Industry Responsibility Act, provides: “In any civil action by a State or unit of local government against a manufacturer of firearms to recover damages relating to the sale, distribution, use or misuse of a firearm . . . the State or unit of local government may, in addition to other damages, recover any Federal damages associated with the claim” The bill defines “Federal damages” as “the amount of damages sustained by the Federal Government . . . including damages relating to medical expenses, the costs of continuing care and disabilities, law enforcement expenses, and lost wages.”

A state or unit of local government seeking to recover Federal damages would be required to notify the Attorney General, who would then have 30 days to enter an appearance in the action. If the Attorney General does not do so, or does so but does not proceed with the action within six months after entering an appearance, then the state or unit of government may continue to seek Federal damages; otherwise it may not. If a state or unit of local government recovers Federal damages, then it would have to turn 1/3 over to the federal government.

H.R. 1233, 106th Congress, the Firearms Rights, Responsibilities, and Remedies Act of 1999, would create a federal cause of action on behalf of “a State, unit of local government, organization, business, or other person that has been injured by or incurred costs as a result of gun violence.” Such plaintiff would be authorized to bring suit, in federal or state court, “against a manufacturer, dealer, or importer who knew or

reasonably should have know that its design, manufacturing, marketing, importation, sales, or distribution practices would likely result in gun violence.”

S. 560, 106th Congress, the Gun Industry Accountability Act, is identical, except for its title, to H.R. 1086, 106th Congress.

S. 686, 106th Congress, the Firearms Rights, Responsibilities, and Remedies Act of 1999, is identical to H.R. 1233, 106th Congress.