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CRIMES AND OFFENSES Offenses Against Public Order and Safety: Reserve to the State the Right to Bring Certain Civil Actions Against Firearms Manufacturers, Trade Associations, and Dealers

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CRIMES AND OFFENSES

*Offenses Against Public Order and Safety: Reserve to the State
the Right to Bring Certain Civil Actions Against Firearms
Manufacturers, Trade Associations, and Dealers*

CODE SECTION: O.C.G.A. § 16-11-184 (amended)
BILL NUMBER: HB 189
ACT NUMBER: 4
GEORGIA LAWS: 1999 Ga. Laws 2
SUMMARY: The Act declares that the lawful design, marketing, manufacture, or sale of firearms or ammunition do not constitute unreasonably dangerous activities and do not create a nuisance per se. The Act also gives the State of Georgia the right to bring suit against any trade association or dealer who conducts the activities listed above on behalf of any governmental unit created by the General Assembly or the Constitution of Georgia. However, the Act does not prohibit local governmental units from filing lawsuits based on breach of contract or breach of warranty theories of liability for firearms or ammunition purchased from the manufacturer or dealer. The Act codifies the rule of law stated in Division 1 of *Rhodes v. R.G. Industries, Inc.*,¹ which held that the fact that the General Assembly had enacted comprehensive licensing schemes for suppliers and purchasers of handguns indicates that the legislature does not intend to ban the manufacture, sale, or use of such weapons and that legislators do not consider the marketing of such weapons to the public as an unreasonably dangerous activity. The Act applies to any action

1. 173 Ga. App. 51, 325 S.E.2d 465 (1984).

pending or brought on or after the Act takes effect.

EFFECTIVE DATE: February 9, 1999²

History

In 1995, the Georgia General Assembly passed the original version of Code section 16-11-184.³ This legislation reserved general authority over the regulation of firearms to the state; it declares that the regulation of firearms is a matter of state-wide concern. Therefore, the Act specifies that no county or municipality shall regulate in any manner the ownership, carrying, transportation, sale, purchase, licensing, or registration of firearms.⁴

Members of the General Assembly amended Code section 16-11-184 because the City of Atlanta joined a number of municipalities that had filed products liability law suits against gun manufacturers in 1998 and early 1999.⁵ The theory behind the lawsuits mirrored those filed by many states against the tobacco industry.⁶ The cities of Chicago, Miami, New Orleans, and Bridgeport, Connecticut filed suits claiming that courts should hold gun manufacturers responsible for the increase in gun violence in their cities. Therefore, gun manufacturers should compensate the cities for the costs of "police and hospital services required because of gun violence."⁷ On February 4, 1999, Atlanta became the fifth city to file such a suit.⁸ The lawsuit was filed

2. See 1999 Ga. Laws 2, §§ 4-5, at 3. The Act took effect upon approval by the Governor. See *id.*

3. See 1995 Ga. Laws 139, § 2, at 140 (formerly found at O.C.G.A. § 16-11-184 (Supp. 1998)).

4. See *id.*; see also Telephone Interview with Randy Kozuch, Director of State and Local Affairs, National Rifle Association (Apr. 9, 1999) [hereinafter Kozuch Interview].

5. See Telephone Interview with Rep. Larry Smith, House District No. 109 (Mar. 18, 1999) [hereinafter Smith Interview]; See *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (remarks by Rep. Curtis Jenkins) (available in Georgia State University College of Law Library).

6. See Charles Walston & Carlos Campos, *Officials Vote to Block Gun Suit*, ATLANTA J. & CONST., Feb. 3, 1999, at B1 (noting that critics across the country say the lawsuits are an "attempt to put the gun industry out of business, and to fatten the coffers of cash-strapped cities and greedy trial lawyers fresh off the success of the tobacco litigation").

7. David Firestone, *Georgia Legislators Approve Bill to Block Suits Against Gun Makers*, N.Y. TIMES NEWS SERV., Feb. 9, 1999, available in 1999 WL-NYT 9904001800.

8. See *id.* As of May 15, 1999, several other municipalities have joined the list of ten cities that have filed suit against the gun manufacturers. These include Newark, Cleveland, and Detroit. See *Newark to Join City Lawsuits Against Gun Makers*, ASSOCIATED PRESS NEWSWIRE, Mar. 18, 1999; *Cleveland Suing Over Gun Safety*, ATLANTA J. & CONST., Apr. 9, 1999, at C4; David Goodman, *Detroit, Wayne County Seek*

by the Atlanta City Attorney against fourteen manufacturers and three trade groups for failure to “install safety devices or provide adequate warnings of the dangers of guns.”⁹ Atlanta Mayor Bill Campbell insisted that the lawsuit is not about money; in fact, he notified the groups named in the city’s lawsuit that he would drop the suit if gun makers would agree to make safety improvements.¹⁰ Specifically, the city wanted gun manufacturers to install an indicator that alerts a user that there is a bullet in the chamber and safety locks that prevent children from pulling the trigger.¹¹

The National Rifle Association called the cities’ lawsuits “reckless” and began a campaign to encourage state legislatures to pass laws prohibiting cities from filing them.¹² Georgia was the first state to pass such a law, and other states are using the Act as a model.¹³

The Act

The Act amends Code section 16-11-184, which restricts the authority of local political subdivisions to regulate firearms.¹⁴ Prior to the Act, the law stated that “the regulation of firearms is properly an issue of general, state-wide concern,” and provided that “no county or municipal corporation . . . shall regulate in any manner gun shows, the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms, components of firearms, firearms dealers, or dealers in firearms components.”¹⁵

\$800 Million From Gunmakers, Sellers, ASSOCIATED PRESS NEWSWIREs, Apr. 27, 1999.

9. See Gita M. Smith, *Barr, Campbell Debate Gun Lawsuits on CNN*, ATLANTA J. & CONST., Mar. 12, 1999, at C2.

10. See *id.*

11. See *id.*

12. See Kozuch Interview, *supra* note 4. The National Rifle Association’s Institute for Legislative Action maintains a website at www.nraila.org. The site tracks the status of these lawsuits, as well as the progress of the different states in passing legislation to stop them. See *A Look at the States* (visited Mar. 30, 1999) <http://www.nraila.org/pub/ila/1999/99-03-12_faxalert_barr_in>.

13. See Kozuch Interview, *supra* note 4; Smith Interview, *supra* note 5; *Second Proposed Law Filed to Stop New Orleans Suit*, ASSOCIATED PRESS NEWSWIREs, Mar. 16, 1999. Louisiana Senator John Hainkel proposed legislation that he said was “virtually the same as the one adopted by the Georgia Legislature.” *Id.*

14. See 1995 Ga. Laws 139, § 2, at 147 (formerly found at O.C.G.A. § 16-11-184 (Supp. 1998)).

15. *Id.*

Section 1

Section 1 of the Act leaves in place the above language, but adds a declaration that “the lawful design, marketing, manufacture, or sale of firearms or ammunition to the public is not unreasonably dangerous activity and does not constitute a nuisance per se.”¹⁶ The Act also gives the state authority to bring a suit relating to the above activities against any firearms or ammunition manufacturer, trade association or dealer by or on behalf of any governmental unit.¹⁷ The Act does not prohibit a government unit from bringing a lawsuit against a manufacturer for firearms purchased by that unit under a breach of contract or warranty theory.¹⁸

Section 2

Section 2 of the Act codifies the rule of law found in Division 1 of *Rhodes v. R.G. Industries, Inc.*¹⁹ In *Rhodes*, the court held that the fact that the General Assembly had enacted comprehensive licensing schemes for suppliers and purchasers of handguns indicated that it did not intend to ban the manufacture, sale, or use of such weapons and that it did not consider the marketing of such weapons to the public as an unreasonably dangerous activity.²⁰ The court also recognized that the General Assembly’s regulation of handguns fell “within Constitutional limits”²¹ because the Georgia Constitution provides that “the General Assembly shall have the power to prescribe the manner in which arms may be borne.”²²

Section 3

Section 3 of the Act provides that the Act will “apply to any action pending on or brought on or after the date this Act becomes effective.”²³

16. O.C.G.A. § 16-11-184 (1999).

17. *See id.*

18. *See id.*; *see also* Smith Interview, *supra* note 5. “This Bill does not interfere with product liability suits in the case where a gun malfunctions and injures someone. It is not the intention to cut off these suits.” *Id.*

19. *See* O.C.G.A. § 16-11-184 (1999); *Rhodes v. R.G. Indus.*, 173 Ga. App. 51, 325 S.E.2d 425 (1984).

20. *See Rhodes*, 173 Ga. App. at 52, 325 S.E.2d at 467.

21. *Id.*

22. *Id.* (quoting GA. CONST. art. I, § 1).

23. O.C.G.A. § 16-11-184 (1999).

Introduction

Representatives Curtis Jenkins of the 110th District and Larry Smith of the 109th District introduced the Act in the 1999 legislative session in response to the cities' lawsuits.²⁴ They also believed that the right to bear arms provided in the Constitution should protect those who manufacture or sell firearms from such suits.²⁵ Representative Smith also noted that these types of lawsuits could create bad precedent that could lead to suits against manufacturers of other lawful products, such as knives, that are not defective but have been used to kill someone.²⁶

Consideration by the House and Senate Committees on Public Safety

The House Public Safety Committee passed the bill after adding an effective date.²⁷ The House of Representatives passed the committee substitute on January 29, 1999 by a vote of 146-25.²⁸ As introduced, the bill only stated that the "lawful design, marketing, or sale of firearms to the public is not unreasonably dangerous activity and does not constitute a nuisance per se," and it only applied to suits against trade associations, manufacturers, and dealers of firearms.²⁹ The Senate Public Safety Committee added language that would declare that the manufacture of both firearms and ammunition do not qualify as an unreasonably dangerous activity or a nuisance per se.³⁰ Representative

24. See Smith Interview, *supra* note 5; See *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

25. See Smith Interview, *supra* note 5; See *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

26. See Smith Interview, *supra* note 5. Congressman Bob Barr of Georgia has proposed similar federal legislation that would also protect the gun industry from liability lawsuits by banning cities and states from suing gun makers. See Rebecca Carr, *Barr's Bill on Gun Suits Draws Opposition*, ATLANTA CONST., Mar. 10, 1999, at A4. In support of his bill, Congressman Barr warned that "'baseball bats could be next' if trial lawyers are allowed to pursue lawsuits against the gun industry." Rebecca Carr, *Blasting Trial Lawyers, Barr Defends Gun Makers Bill to Limit Litigation: Pleases Business Leaders, Who Feel Like Targets*, ATLANTA J. & CONST., Mar. 14, 1999, at B1.

27. Compare HB 189, as introduced, 1999 Ga. Gen. Assem., with HB 189 (HCS), 1999 Ga. Gen. Assem.

28. See Georgia House of Representatives Voting Record, HB 189 (Jan. 29, 1999).

29. Compare HB 189, as introduced, 1999 Ga. Gen. Assem., with HB 189 (SCS), 1999 Ga. Gen. Assem.

30. Compare HB 189, as introduced, 1999 Ga. Gen. Assem., with HB 189 (SCS), 1999 Ga. Gen. Assem.

Jenkins noted that the Committee made this addition “out of an abundance of caution.”³¹ The Senate Public Safety Committee also added language that would prohibit the cities and counties from suing a manufacturer or dealer of ammunition.³² According to Randy Kozuch, Director of State and Local Affairs for the National Rifle Association, the Committee added the provision because proponents of the bill believed that cities might try to sue ammunition manufacturers if they could not sue gun manufacturers.³³ The Senate adopted the Senate Public Safety Committee substitute on February 8, 1999 and then passed the bill by a vote of forty-four to eleven.³⁴

On February 9, 1999 Representative Jenkins explained the Senate Public Safety Committee changes to the House of Representatives.³⁵ Representative Barbara Mobley then expressed her concern that Section 3 of the Act, which provides that the Act will apply to all pending lawsuits, would violate the ex-post facto provisions of the Georgia Constitution.³⁶ Representative Jenkins assured the members that many staff members in the Office of Legislative Counsel had reviewed the provision and they felt “comfortable with that language.”³⁷ Representative Teper asked whether the bill would prevent a city or county from recovering damages incurred by the political subdivision while providing emergency services to a firearms or ammunition manufacturing facility during an accident that was caused by the manufacturer’s negligence.³⁸ Representative Jenkins replied that while he had not considered the question of whether the bill would even apply to a lawsuit based on negligence, he believed that other laws, such as environmental protection laws, would still be enforceable against the manufacturing facility in such a case.³⁹

31. *Lawmakers '99* (GPTV broadcast, Feb. 9, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

32. *Compare* HB 189, as introduced, 1999 Ga. Gen. Assem., *with* HB 189 (SCS), 1999 Ga. Gen. Assem.

33. *See* Kozuch Interview, *supra* note 4.

34. *See* Georgia Senate Voting Record, HB 189 (Feb. 8, 1999).

35. *See Lawmakers '99* (GPTV broadcast, Feb. 9, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

36. *See Lawmakers '99* (GPTV broadcast, Feb. 9, 1999) (remarks by Rep. Barbara Mobley) (available in Georgia State University College of Law Library).

37. *Lawmakers '99* (GPTV broadcast, Feb. 9, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

38. *See Lawmakers '99* (GPTV broadcast, Feb. 9, 1999) (remarks by Rep. Doug Teper) (available in Georgia State University College of Law Library).

39. *See Lawmakers '99* (GPTV broadcast, Feb. 9, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

Amendments that Failed

Although the bill quickly passed through both the House and the Senate, several proposed amendments failed. House Minority Leader, Representative Bob Irvin proposed an amendment to the bill during debates on the House floor.⁴⁰ One amendment would have required that, in the event that the state did choose to file a lawsuit against the firearms manufacturers, the state would be prohibited from compensating its outside counsel with a contingent fee.⁴¹ Representative Irvin stated that he offered the proposed amendment because he believed that the cities' lawsuits amounted to extortion conducted by "predatory, greedy, rogue trial lawyers."⁴² Senator Bart Ladd proposed an amendment to the bill that would have banned lawsuits by municipalities, except for products defects suits, against all manufacturers.⁴³ The amendment failed by a vote of thirty-three to twenty-two.⁴⁴

Representative Irvin also proposed a separate bill, HB 267, that would have extended this type of protection to all manufacturers, rather than just firearms manufacturers.⁴⁵ However, HB 267 stalled in the House of Representatives after being read only twice in early January.⁴⁶ While speaking in support of the bill, Representative Jenkins stated that he would not favor extending the coverage beyond firearms manufacturers because "firearms are perhaps the only product that the ownership, possession, and use of which is specifically protected by the Bill of Rights and the Georgia Constitution."⁴⁷

40. See *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (remarks by Rep. Bob Irvin) (available in Georgia State University College of Law Library).

41. See *id.*

42. *Id.*

43. See Peter Mantius, *1999 Georgia Legislature Senate OKs Bill to Kill Gun Suit-Crucial Legislation: Four Metro Atlanta Lawmakers Reverse Positions in Favor of Bringing Bill to Vote*, ATLANTA CONST., Feb. 9, 1999, at B4.

44. See Georgia Senate Voting Record, HB 189 (Feb. 8, 1999); see also Mantius, *supra* note 41.

45. See HB 267, as introduced, 1999 Ga. Gen. Assem.; see also Charles Walston, *Duel Brews on Barring Suits on Guns*, ATLANTA J. & CONST., Jan. 27, 1999, at B1. Representative Irvin stated that he does not "see a distinction between guns and other products." *Id.*

46. See State of Georgia Final Composite Status Sheet, May 3, 1999.

47. *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (remarks by Rep. Jenkins) (available in Georgia State University College of Law Library).

Opposition to HB 189

Opposition to the Act came from several members of the General Assembly, the Mayor of Atlanta, and community groups, such as the Georgia Municipal Association and Georgian's United Against Violence.⁴⁸ Senators Donzella James, David Scott, and Vincent Fort, and Representative Douglas Dean rose to speak against the bill during House and Senate floor debates.⁴⁹ Senator David Scott, the Senate Rules Committee Chairman, raised concerns about fostering safer guns, stating that "if we can require that the pharmaceutical companies put a lock cap on a bottle of aspirin for a headache, surely we can ask them to put some safety mechanisms on firearms."⁵⁰ Representative Dean expressed concerns about limiting the constitutional right of access to the courts and found nothing wrong with the cities' efforts to hold firearms manufacturers responsible for the damage that guns cause in our cities and communities.⁵¹ Senator Fort believed that the bill constituted a direct attack on the City of Atlanta and accused the General Assembly of acting hypocritically.⁵² Senator Fort noted that typically, the General Assembly takes the position that the City of Atlanta should be under local control; it thus frequently fails to get involved and help with issues that affect the city.⁵³ Under the Act, however, the General Assembly takes away the city's local control on the issue of gun lawsuits.⁵⁴ Senator Fort also noted that the most important reasons to allow cities to sue gun manufacturers were to protect children's lives by curtailing the number of gun-related deaths and to stop firearms manufacturers from creating gun-related expenses for the city and its hospitals.⁵⁵

While the Georgia Municipal Association (GMA) had no opinion as to the merits of the lawsuits themselves, it voiced concern about the bill's implications for the concept of home rule.⁵⁶ Susan Pruett of the

48. See Mantius, *supra* note 41; Walston & Campos, *supra* note 6.

49. See *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (available in Georgia State University College of Law Library).

50. *1999 Georgia Legislature Quotable*, ATLANTA J., Mar. 25, 1999, at B4.

51. See *Lawmakers '99* (GPTV broadcast, Jan. 29, 1999) (remarks by Rep. Douglas Dean) (available in Georgia State University College of Law Library).

52. See Telephone Interview with Sen. Vincent Fort, Senate District No. 39 (June 7, 1999) [hereinafter Fort Interview].

53. See *id.*

54. See *id.*

55. See *id.*

56. See Telephone Interview with Susan Pruett, Associate General Counsel for the Georgia Municipal Association (May 13, 1999) [hereinafter Pruett Interview].

GMA noted that the Association's members feared that if the state could limit the situations in which the cities can sue, the state could further erode the cities' authority.⁵⁷ As for the lawsuits themselves, Pruetz stated that the judiciary is competent to decide whether the city has a case, and it should be left to the courts to do so.⁵⁸

Possible Constitutional Challenge to the Act

The Act's opponents have vowed to challenge it on constitutional grounds.⁵⁹ Atlanta Mayor Bill Campbell predicted that courts would find the Act unconstitutional.⁶⁰ The Fulton County Commission is considering whether or not to join the City of Atlanta in its gun lawsuits.⁶¹ The Commission passed legislation by a vote of four to three that "directs the county attorney to research the constitutionality" of the Act.⁶²

When asked about the possibility of a challenge, Representative Larry Smith stated that he believed that any challenge would likely fail because "all municipalities are creations of the state, and the state is free to do what it wants to regulate them."⁶³ He also believes that if courts find the Act unconstitutional, the General Assembly will act quickly to cure the constitutional defects.⁶⁴ Other proponents of the Act express confidence that the Act's drafters conducted the proper research into the relevant law and that the Act will withstand any challenge.⁶⁵

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57. *See id.*

58. *See id.*

59. *See* Mantius, *supra* note 41; Firestone, *supra* note 7.

60. *See* Mantius, *supra* note 41.

61. *See* Alfred Charles, *Colorado School Massacre Special Report: Lawsuits-Fulton Shifts, May Join Suit Against Gun Makers*, ATLANTA J. & CONST., Apr. 22, 1999, at B2.

62. *Id.*

63. Smith Interview, *supra* note 5.

64. *See id.*

65. *See* Kozuch Interview, *supra* note 4.