

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

Senate Bill 493 (Senator Ferguson. *et al.*)

Judicial Proceedings

**Actions Reserved to the State - Lawsuits Against Gun Manufacturers and Dealers
by or on Behalf of Local Governments**

This bill reserves to the State the authority to bring, by or on behalf of local governments, lawsuits against gun manufacturers or dealers for damages, abatement, or injunctive relief resulting from or relating to the lawful design, marketing, or sale of a gun to the public. Exceptions are granted for suits involving breach of contract or warranty applicable to a gun purchased by a local government.

The bill prohibits the State from exercising this reserved authority without an act of the General Assembly. The bill also requires a retroactive application of these provisions.

Fiscal Summary

State Effect: It is assumed that any such State lawsuits could be handled with existing resources.

Local Effect: It is unknown whether any such suits are under consideration by local governments at this time. In any event, any potential for lost revenue as a result of this bill cannot be reliably estimated.

Small Business Effect: Potential meaningful. There are no gun manufacturers in the State that meet the definition of small business. The extent to which any gun dealers in the State (who are small businesses) would not be sued as a result of this bill cannot be reliably estimated, but could be significant to any small business which is sued.

Analysis

Current Law: Maryland's subdivisions are assumed to have standing to bring such suits.

In 1988, as part of the Act that established the Handgun Roster Board, the General Assembly adopted legislation that prohibited the imposition of strict liability for damages on any person as a result of the criminal misuse of a firearm by a third person, unless the person was acting in concert with the criminal. This legislation overturned the 1985 decision of the Court of Appeals in *Kelley v. R. G. Industries*, 304 Md. 124, which had allowed a lawsuit based on these grounds. As a result of the 1988 law, an action based on strict liability in tort cannot be successfully brought in the State; however, a cause of action based on another theory, such as the public nuisance theory used by Chicago, would still be possible.

Background: During the past few years, several U.S. cities (such as Chicago and New Orleans) have filed major lawsuits against gun manufacturers, primarily on product liability grounds or public nuisance grounds.

Within the last 12 months, more than two dozen lawsuits have been filed across the country by government entities against the gun industry. New Orleans was the first city in the nation to file such a suit. Two weeks later, Chicago followed with a second lawsuit. Each lawsuit focuses on distinct conduct by the gun industry that causes gun violence within the plaintiff city. The New Orleans suit focuses on product liability issues and the industry's failure to incorporate feasible safety systems into guns that would prevent widespread firearm misuse by unauthorized users. The Chicago suit attacks the industry's role in the problem of gun trafficking, labeling firearm manufacturers and distributors as a public nuisance. Although neither the State of Maryland nor any local government in the State has instituted suit against a gun manufacturer, former Baltimore Mayor Schmoke was reportedly at one point considering whether such a suit was feasible.

To date, none of these suits have been tried. In February 1999, however, a jury in a federal district court in New York awarded an individual \$560,000 in a suit brought against several firearms manufacturers.

In response to the lawsuit brought by the city of Atlanta against firearms manufacturers, state lawmakers in Georgia adopted legislation that prohibits these suits by local governments. At least three other states, Alabama, Louisiana, and Wyoming, have considered legislation that would prohibit lawsuits by localities against firearms manufacturers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll County, Harford County, Montgomery County, Prince George's County, Queen Anne's County, Department of Legislative Services

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drg/jr

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