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SB218

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We oppose the adoption of this measure. Our reasons are:

1. This Bill would give Maryland specific authority to bring a suit on behalf of a local government because of a legal product, firearms, being sold legally in this state are misused by some buyers (criminals). Unlike tobacco, firearms are known to be dangerous and manufacturers have not conspired to deceive the public about those dangers. Each firearm sold legally in Maryland is approved by Maryland to be sold and each buyer of regulated firearms is likewise approved. Currently, neither the state nor local governments have the authority to sue since each gun model and each legal sale of a gun is specifically approved by the action of the state. No legal theory supports suing a manufacturer when its product is misused by a criminal to break the law.

While this bill is similar to one signed into law in Texas by Governor (now President) Bush, Texas has a different legal environment and does not take as active a role in approving gun models for sale as Maryland.

2. Lawsuits brought in other states by local governments have universally failed (see attachment below). If this bill is to protect manufacturers or dealers, the existing case law should provide enough protection. If this bill is not intended to protect the manufacturers or dealers, it should be opposed as an addition effort to control firearms and that control should result from the democratic process – the legislature, not from law suits.

3. In research by John Lott on gun ownership rates across states over time, he found that higher gun ownership rates are associated with dramatically lower crime rates. Further, the poorest people in the most crime-prone areas benefit the most from gun ownership. Lawsuits that raise the costs of gun purchases will reduce gun ownership and hit poor people the hardest. So, lawsuits will have exactly the reverse of the hoped for impact. For more on this topic see the attached document below.

Will Suing Gun Manufacturers Save Lives?

By John R. Lott, Jr.
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Enticed by the proposed $ 516 billion tobacco settlement, some crime-ridden cities are mulling similar class-action lawsuits against gun makers. The cases may look alike, but the legal arguments are much different. And the difference is in the data.

Philadelphia Mayor Ed Rendell first raised the possibility of a city's suing firearms makers to recoup costs from gun-related injuries and deaths. And if Philadelphia sues, Detroit and Miami may follow.

But the case is much harder to make than these mayors imagine. Simply claiming that murders are committed with guns is not enough. Unlike tobacco firms, gun makers have powerful arguments pointing to the benefits of gun ownership.

Until recently, tobacco suits went nowhere because juries usually found that smokers knew the risks of smoking. But the states' class-action suit against tobacco firms was different. It emphasized what the companies knew about their product, pushing what smokers knew about the dangers of their habit to the background. No comparable strategy exists for guns, since no one denies that guns can kill.

In the tobacco suit, the states relied on specious claims. They argued that smoking costs them money. That was wrong. Of course, people die from smoking. The question of state health- care costs isn't whether people die -- we all die sooner or later - but whether the illnesses produced by smoking are more costly.

Smokers live shorter lives. When they get sick, they tend to die relatively quickly. It's true that states must bear these health-care costs sooner, but that's offset by shorter illnesses. And once the long-term savings to state pension programs are taken into account, tobacco clearly saves states money.

For obvious reasons, tobacco companies were never comfortable with this argument, and judges weren't sympathetic. That left the state attorneys general to make wild accounting arguments in which they counted only the costs and not the benefits to state coffers from smoking-related deaths.

But the cities shouldn't expect to have the same leeway in a gun lawsuit. With city police officers carrying guns, it will be difficult for cities not to acknowledge some benefits. More important, criminals also tend to attack victims that they perceive as weak, and guns serve as an important deterrent against crime.

The Justice Department's annual National Crime Victimization Survey shows that while passive behavior is normally a safer course of action than active resistance, that's not true for all types of crimes or victims.

The chance of serious injury from an attack is 2.5 times greater for women offering no resistance than for those resisting with a gun. For men, behaving passively is 1.4 times more likely to result in serious injury than resisting with a gun. People use guns defensively about 2.5 million times each year, and 98% of the time simply brandishing the weapon is enough to stop an attack.

The defensive nature of guns is further reflected in the different rates of "hot burglaries," in which the victim is at home when a burglar strikes. In Canada and Britain, where gun-control laws are strict, almost half of all burglaries are "hot." In the U.S., where greater gun ownership is allowed, only 13% of burglaries are "hot."

Criminals aren't behaving differently by accident. U.S. felons say in surveys that when committing crimes, they worry more about armed victims than about police.

In my own research on gun ownership rates across states over time, I found that higher gun ownership rates are associated with dramatically lower crime rates. Further, the poorest people in the most crime-prone areas benefit the most from gun ownership. Lawsuits that raise the costs of gun purchases will reduce gun ownership and hit poor people the hardest.

Suing gun makers is surely a lose-lose proposition. If the cities lose, Mayor Rendell is right to worry about the $ 1 million such litigation could cost his constituents alone. If the cities "win," law-abiding citizens across the country will pay much more for the right to protect themselves. And the poor, who can least afford to pay these higher prices, stand to lose the most.

John R. Lott Jr. is the John M. Olin Law and Economics Fellow at the University of Chicago School of Law and author of "More Guns, Less Crime" (University of Chicago Press, 1998).

Current Cases

On the municipal litigation front, as of January 25, 2001, a total of 32 municipalities and 1 State Attorney General have filed 23 lawsuits against the firearms industry to recover damages for the creation of a public nuisance, the negligent distribution of their products and for producing products with inadequate safety systems. Municipalities who have filed suit include: Atlanta, GA; Boston, MA; Bridgeport, CT; Camden City, NJ; Camden County, NJ; Chicago, IL; Cincinnati, OH; Cleveland, OH; Detroit, MI; Gary, IN, Los Angeles City, CA; Los Angeles County, CA; Miami-Dade County, FL; Newark, NJ; New Orleans, LA; New York, NY; Philadelphia, PA; San Francisco, CA; St. Louis, MO; Wayne County, MI; and Wilmington, DE.

These lawsuits are in various phases of litigation. Defendants have filed motions to dismiss, the first test for these cases in court, in at least 15 of the municipal litigation cases. To date, seven lawsuits have been dismissed, including Bridgeport, Camden County, Chicago, Cincinnati, Gary, Miami-Dade County and Philadelphia, while seven lawsuits have survived or partially survived the initial threshold motions including Atlanta, Boston, California, Cleveland, New Orleans, Detroit/Wayne County, and Wilmington. Those municipalities that have had their lawsuits dismissed are now in the process of appealing their cases to a higher court.

This past December, the City of Boston reached a settlement agreement with Smith & Wesson Corp. On December 11, 2000, the City of Boston and the Boston Public Health Commission entered into a settlement agreement with Smith & Wesson Corp., the largest handgun manufacturer in the United States, after nine months of negotiations between the parties. As part of the agreement, the City of Boston and the Boston Public Health Commission will dismiss Smith & Wesson from their lawsuit against members of the firearms industry with prejudice, subject to any consent orders entered pursuant to the agreement. This settlement does not stop the lawsuit against the remaining manufacturers named as defendants in the Boston suit.

The settlement agreement comes nine months after the announcement of the March 17, 2000 settlement agreement between Smith & Wesson and the Department of Housing and Urban Development (HUD), the State Attorneys General of New York and Connecticut, and certain municipalities that had filed suit against members of the firearms industry. Both the HUD and the Boston settlement agreements contain a "Safety and Design" and a "Sales and Distribution" section. However, the settlement terms between the two agreements vary slightly.

A selection of the publicly filed documents in these cases may be located under the (http://www.firearmslitigation.com/decisions.html) section of our web site.