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PROHIBIT LOCAL GOVERNMENTS FROM SUING MANUFACTURERS OF LEGAL PRODUCTS

House Bill 4275 (Substitute H-2) First Analysis (2-19-02)

Sponsor: Rep. James Koetje
Committee: Civil Law and the Judiciary

THE APPARENT PROBLEM:

The debate over gun control has been one of the most rancorous of issues facing this country. However, during the past few years, some opponents have begun to move away from attempting to impose stricter limits on the sale and ownership of firearms, and instead attempted to place pressure on the gun industry by suing gun manufacturers. The first lawsuit filed against the firearms industry (including dealers, distributors, and manufacturers) was entered in 1998 by the City of New Orleans. Many other cities and counties followed suit, including Detroit and Wayne County, filing civil actions against gun manufacturers seeking compensation for the public costs associated with gun violence. According to the lawsuits, the public costs associated with gun-related violence, unintentional shootings, and teen suicide include factors such as medical care, police investigation, emergency personnel, public health resources, courts, and prisons.

Some people suggested at the time that the lawsuits were of questionable legal merit, were politically motivated, and were clearly an attempt to force gun manufacturers into dealing with the demands of local units of government. Opponents of these actions argued that if lawsuits against gun manufacturers were to be allowed in Michigan, they should be taken up by the attorney general, rather than local units. In response, Public Act 265 of 2000 amended the act regulating the sale and possession of firearms and Public Act 492 of 2000 amended the Code of Criminal Procedure to prevent local governments from bringing such lawsuits. However, the right to bring traditional tort and contract claims, based on products purchased or contracts entered into by the local government, was preserved. As a result, some people fear that the potential exists for businesses to be driven out of Michigan if local units of government bring lawsuits involving products other than guns. It is proposed that a new act be established to prohibit a local unit of government from bringing such civil actions.

THE CONTENT OF THE BILL:

House Bill 4275 would create a new act to prohibit a local unit of government (a county, city, township, or village) from filing, or initiating (on its own behalf, or on behalf of its citizens or another class of persons) a civil action for damages or other remedy against a person for the production of a legal product. The bill would define "person" to mean "an individual, partnership, corporation, association, or other legal entity," "political subdivision" to mean a county, city, township, or village, and "production" to mean "manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, inspection, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling."

The bill would not apply to the following actions:

- An action related to a product that had been bought and used by the political subdivision if the action was based on a breach of contract or warranty.
- A product liability, personal injury, or wrongful death action, if an employee, agent, or property of the political subdivision had been injured or damaged as a result of a defect in the design or manufacturer of a legal product that the political subdivision had purchased.
- An action arising from the provision of, or the duty to provide the political subdivision with, services or tangible or intangible property,
- An action based upon a relationship with the political subdivision arising from any contract, franchise, license, permit, or other legal relationship.
- The enforcement of any legal requirement that the political subdivision was authorized or required to adopt under state or federal law or the state constitution of 1963.

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- An action brought by the political subdivision as a counterclaim in an action brought against the political subdivision.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) estimates that the bill would have no impact on state funds. (2-19-02)

ARGUMENTS:

For:

The power to sue is the power to destroy, and some would argue that several political subdivisions have used this power as a means of engineering social policy. They have attempted to gain through litigation what they had been unable to achieve through legislation. Who is to say that these local entities, having been successful in suing gun manufacturers and tobacco companies, will not turn their attention to other businesses? For example, toward the producers of fatty foods, on the basis that these cause obesity? Or toward automobile manufacturers, for causing air pollution?

These issues were debated during committee hearings on Public Act 265 of 2000, which was enacted to prohibit a local unit of government from bringing civil actions against gun manufacturers. The concern now is that the potential still exists for local units to bring lawsuits against the manufacturers of other products for perceived corporate wrongs to their citizens, and as a result drive business out of the state. House Bill 4275 would extend to all businesses the protection afforded under Public Act 265 to gun manufacturers, and accordingly protect Michigan companies that produce legal products from politically motivated lawsuits.

Response:

In testimony presented before the House committee, representatives of local units of government pointed out that in the past there have been few civil actions involving damages. In fact, since the law now bars local communities from bringing civil actions against gun manufacturers, the only industry that is likely to be a target of future lawsuits is the tobacco industry. Instead, opponents of the bill propose that legislation be introduced that specifically prohibits local units from bringing civil actions against that industry.

Rebuttal:

As written, the bill provides for broad exceptions to its general prohibition of civil actions against the manufacturers of legal products. Among these are provisions that would allow a political subdivision to bring a product liability, personal injury, or wrongful

death action based on a product purchased and owned by the political subdivision. For example, the bill would permit a lawsuit in a case involving a municipal employee who is injured due to a defect in the design of a product that had been purchased by the municipality. Moreover, citizens will still be able to sue for damages on their own behalf.

Against:

Some say the intent of the bill is analogous to the federal government barring states from suing tobacco companies. In the United States, public policy has always defended local control. It does not make sense, then, for a community's access to the courts to be abrogated by the state. Moreover, while the state has the obligation to prohibit actions that affect *all* its citizens, many would argue that situations will always arise which invite civil actions involving damages, but which are unique to the citizens of one particular local area. However, the bill does not support the concept of local differences.

POSITIONS:

The Michigan Manufacturers Association (MMA) supports the bill. (2-19-02)

The Michigan Trial Lawyers Association (MTLA) has a neutral position on the bill. (2-15-02)

The Michigan Townships Association (MTA) has no position on the committee substitute. (2-19-02)

The Michigan Municipal League (MML) opposes the bill. (2-15-02)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.