

BILL ANALYSIS

Senate Research Center

H.B. 928
By: Krause et al. (Estes)
Agriculture, Rural Affairs, & Homeland Security
5/9/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that reconciling the tension created by the dual sovereignty of the state and federal government is an ongoing and always-evolving predicament and that, while the supremacy clause in the United States Constitution states that federal law is superior to the laws of the state, the Ninth and Tenth Amendments to the United States Constitution are construed to reserve for the people and the states all power not prescribed to the federal government. These parties contend that while the United States Supreme Court has ruled that the role of constitutional nullification belongs expressly to the federal judiciary and not to the several states, legal precedents support the principle that the federal government may provide incentives to or penalties against a state to coerce it to act in a certain way, but it cannot simply require a state to act that way.

If the state is not required, and cannot be required, to assist the federal government in enforcing its laws, these parties further contend that the state could redefine the cooperative framework in which its resources (state and local law enforcement, agencies, employees, et cetera) operate in relation to enforcement of federal firearm regulation to actively mitigate the impact of federal regulations it deems too restrictive, prohibitive, or punitive.

H.B. 928 amends current law relating to the enforcement of certain federal laws regulating firearms, firearm accessories, and firearm ammunition within the State of Texas.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1, Penal Code, by adding Section 1.10, as follows:

Sec. 1.10. ENFORCEMENT OF CERTAIN FEDERAL LAWS REGULATING FIREARMS, FIREARM ACCESSORIES, AND FIREARM AMMUNITION. (a) Defines "firearm" and "firearm accessory" in this section.

(b) Prohibits an agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, from contracting with or in any other manner providing assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation, such as a capacity or size limitation or a registration requirement, that does not exist under the laws of this state.

(b-1) Provides that Subsection (b) does not apply to a contract or agreement to provide assistance in the enforcement of a federal statute, order, rule, or regulation in effect on August 31, 2013, that pertains to border security.

(c) Prohibits a political subdivision of this state from receiving state grant funds if the political subdivision adopts a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or, by consistent actions, requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). Requires that state grant funds for the political subdivision be denied for the fiscal year following the year in which a final judicial determination in an action brought under this section is made that the political subdivision has intentionally required the enforcement of any federal statute, order, rule, or regulation described by Subsection (b).

(d) Authorizes any citizen residing in the jurisdiction of a political subdivision of this state to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the political subdivision has adopted a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or that, by consistent actions, requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). Requires the citizen to include with the complaint the evidence the citizen has that supports the complaint.

(e) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (d) against a political subdivision of this state is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the political subdivision is located to compel the political subdivision to comply with Subsection (b). Authorizes the attorney general to recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) Provides that an appeal of a suit brought under Subsection (e) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. Requires the appellate court to render its final order or judgment with the least possible delay.

(g) Requires the attorney general to defend any agency or political subdivision of this state that the federal government attempts to sue or prosecute for an action or omission consistent with the requirements of this section.

SECTION 2. Effective date: upon passage or September 1, 2013.