

BILL ANALYSIS

Senate Research Center

H.B. 1076
By: Toth et al. (Paxton)
Agriculture, Rural Affairs & Homeland Security
5/7/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that in order to protect the rights of Texas gun owners, it is necessary to make federal laws restricting the ownership of certain firearms, firearm accessories, and firearm ammunition unenforceable within the state's boundaries.

H.B. 1076 amends current law relating to certain firearms, firearm accessories, and firearm ammunition within the State of Texas, provides an exemption from federal regulation, and provides penalties.

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. Provides that the Legislature of the State of Texas finds that:

(1) The Tenth Amendment to the United States Constitution reserves to the states and the people all powers not granted to the federal government elsewhere in the constitution, as those powers were understood at the time Texas was admitted to statehood in 1845. The guaranty of those powers is a matter of contract between the state and people of Texas and the United States dating from the time Texas became a state.

(2) The Ninth Amendment to the United States Constitution guarantees to the people rights not enumerated in the constitution, as those rights were understood at the time Texas became a state. The guaranty of those rights is a matter of contract between the state and people of Texas and the United States dating from the time Texas became a state.

(3) The Second Amendment to the United States Constitution guarantees the right of the people to keep and bear arms, as that right was understood at the time Texas became a state. The guaranty of that right is a matter of contract between the state and people of Texas and the United States dating from the time Texas became a state.

(4) Section 23 (Right to Keep and Bear Arms), Article I (Bill of Rights), Texas Constitution, secures to Texas citizens the right to keep and bear arms. That constitutional protection is unchanged from the date the constitution was adopted in 1876.

SECTION 2. Amends the Penal Code by adding Chapter 40, as follows:

CHAPTER 40. THE TEXAS FIREARM PROTECTION ACT

Sec. 40.01. Authorizes this chapter to be cited as the Texas Firearm Protection Act.

Sec. 40.02. DEFINITIONS. Defines "firearm" and "firearm accessory" in this chapter.

Sec. 40.03. STATE AND LOCAL GOVERNMENT POLICY REGARDING ENFORCEMENT OF FEDERAL FIREARM LAWS. (a) Provides that this section applies to:

(1) the State of Texas, including an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or a system of higher education;

(2) the governing body of a municipality, county, or special district or authority;

(3) an officer, employee, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and

(4) a district attorney or criminal district attorney.

(b) Prohibits an entity described by Subsection (a) from adopting a rule, order, ordinance, or policy under which the entity enforces, or by consistent action allows the enforcement of, a federal statute, order, rule, or regulation enacted on or after January 1, 2013, that purports 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 capacity or size limitation, a registration requirement, or a background check, that does not exist under the laws of this state.

(c) Prohibits any entity described by Subsection (a) and any person employed by or otherwise under the direction or control of the entity from enforcing or attempting to enforce any federal statute, order, rule, or regulation described by Subsection (b).

(d) Prohibits an entity described by Subsection (a) from receiving state grant funds if the entity adopts a rule, order, ordinance, or policy under which the entity enforces any federal laws described by Subsection (b) or, by consistent actions, allows the enforcement of any federal laws described by Subsection (b). Requires that state grant funds for the entity 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 entity has violated Subsection (b).

(e) Authorizes any citizen residing in the jurisdiction of an entity described by Subsection (a) to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the entity has adopted a rule, order, ordinance, or policy under which the entity enforces the federal laws described by Subsection (b) or that the entity, by consistent actions, allows the enforcement of any laws described by Subsection (b). Requires the citizen to include with the complaint the evidence the citizen has that supports the complaint.

(f) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (e) against an entity described by Subsection (a) 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 an entity described by Subsection (a) is located to compel the entity that adopts a rule, order, ordinance, or policy under which the local entity enforces the laws described by Subsection (b) or that, by consistent actions, allows the enforcement of the laws described by Subsection (b), to comply with this section. Authorizes 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.

(g) Provides that an appeal of a suit brought under Subsection (f) 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.

(h) Provides that a person commits an offense if, in the person's official capacity as an officer of an entity described by Subsection (a), or as a person employed by or otherwise under the direction or control of the entity, or under color of law, knowingly enforces or attempts to enforce any federal statute, order, rule, or regulation described by Subsection (b). Provides that an offense under this subsection is a Class A misdemeanor.

SECTION 3. Effective date: upon passage or September 1, 2013.