

BILL ANALYSIS

H.B. 1314
By: Creighton
Federalism & Fiscal Responsibility, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Second Amendment to the U.S. Constitution guarantees the right of American citizens to keep and bear arms. Interested parties contend that the most important aspect of this amendment is that the federal government may not seize a citizen's firearm without cause; however, the federal government has recently considered enacting measures that challenge this protection based on questionable constitutional grounds. H.B. 1314 seeks to prevent the enforcement of federal laws that exceed the federal government's constitutional authority by creating a new offense for the unlawful seizure of a firearm.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1314 amends the Penal Code to create the Class A misdemeanor offense of unlawful seizure of a firearm for a person who is an officer or employee of the United States, of the state, or of a political subdivision of the state and who, while acting under color of the person's office or employment, intentionally or knowingly seizes a firearm as permitted or required by a federal statute, order, rule, or regulation that imposes a prohibition, restriction, or other regulation on firearms that does not exist under Texas law. The bill establishes that a person acts under color of the person's office or employment if the person acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

H.B. 1314 creates an exception to such an offense if the person's seizure of a firearm was consistent with an explicit and applicable grant of federal statutory authority that is consistent with the U.S. Constitution. The bill authorizes the prosecution to negate the existence of that exception only by proving beyond a reasonable doubt that, based on a decision entered by the United States Supreme Court on or after September 1, 2013, the federal statute, order, rule, or regulation permitting or requiring the seizure of a firearm is not within the scope of federal powers conferred by the U.S. Constitution.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.