

HB 307 - AS INTRODUCED

2021 SESSION

21-0553
04/05

HOUSE BILL **307**

AN ACT relative to the state preemption of the regulation of firearms and ammunition.

SPONSORS: Rep. Silber, Belk. 2; Rep. Yakubovich, Merr. 24; Rep. Comtois, Belk. 7; Rep. Gould, Hills. 7

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides state preemption of the regulation of firearms, ammunition, ammunition components, knives, and firearms components and accessories.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
21-0553
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the state preemption of the regulation of firearms and ammunition.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Legislative Findings. The general court finds that:

- I. New Hampshire is not a home rule state.
- II. If municipal ordinances and regulations regarding firearm regulation differ from municipality to municipality it may place a citizen in danger of inadvertently violating the law.
- III. We are a nation of laws and every person is subject to the law, including people who are lawmakers, law enforcement officials, and judges.
- IV. Citizens have good reason to expect that elected officials will be held to the same standard as citizens and that our statutes shall be followed and penalties are reasonable for purposeful violations of the law.

2 Name of Act. This act shall be known as the New Hampshire Second Amendment state preemption act.

3 Firearms, Ammunition, and Knives; State Preemption. The subdivision heading preceding RSA 159:26 and RSA 159:26 are repealed and reenacted to read as follows:

New Hampshire Second Amendment State Preemption Act

159:26 Legislative Intent.

I. It is the intent of this subdivision to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal jurisdictions, which regulate firearms, ammunition, ammunition components, knives, and firearms components and accessories; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, ammunition components, knives, and firearms components and accessories unless specifically authorized by this subdivision or general law; and to require local jurisdictions to enforce state firearms laws. Except as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision, including, without limitation, any school district or school administrative unit, shall regulate the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, ammunition components, firearms supplies and accessories or knives in this state.

II. It is further the intent of this subdivision to deter and prevent the violation of this subdivision and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, components thereof, or knives, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

159:27 State Preemption. Except as expressly provided by the state constitution or statute, the general court hereby declares that it is occupying the whole field of regulation of firearms, ammunition, ammunition components, knives, and firearms components and accessories, including the purchase, sale, transfer, taxation, manufacture, repair, modification, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto or by any school district or school administrative unit. Any existing ordinances, rules, or regulations of any county, city, town, municipality, school district or school administrative unit are, upon the effective date of this section, hereby declared null and void.

159:28 Prohibitions; Penalties.

I. No public entity shall, and no private entity leasing or operating in any manner on any property owned, whole or in part, by the state, a political subdivision of this state, committee, or other governmental unit thereof, including a school district or school administrative unit shall regulate or attempt to regulate the sale, use, or possession of the firearms, firearms components and accessories, ammunition, ammunition components, firearms supplies or knives on any property owned, whole or in part, by the state, political subdivision, committee, or other governmental unit thereof, including a school district or school administrative unit, unless explicitly authorized by statute.

II. The superior court shall declare invalid and unenforceable any ordinance, regulation, or rule adopted by any person, county, agency, municipality, district, or other political subdivision, including a school district or school administrative unit, that violates the provisions of this subdivision and shall issue a permanent injunction against the political subdivision that adopted such ordinance, regulation, or rule prohibiting it from enforcing such ordinance, regulation, or rule. It shall be no defense that in enacting the ordinance, regulation, or rule the county, city, town, or other local government entity, including a school district or school administrative unit was acting in good faith or upon the advice of counsel.

III. Upon a good faith belief that a county, city, town, or other local government entity, or other public or private organization or entity has violated this section, any citizen of this state believing themselves to be aggrieved by such actions shall give written notice by certified mail, return receipt requested, or by a nationally-recognized courier

service, to the county, city, town, or other local government entity or public or private organization or entity that is believed to have violated this section of the citizen's reasonable belief of such a violation, and the county, city, town, or other local government entity or other public or private organization or entity shall, within 90 days or receiving such notice, rescind any such ordinance, regulation, or rule that violates this section. If after the expiration of such 90-day period, the county, city, town, or other local government entity or other public or private organization or entity that enacted any such ordinance, regulation, or rule fails or refuses to rescind such ordinance, regulation, or rule, any citizen of this state claiming to be aggrieved who has given such notice may bring an action in the superior court in the county of the citizen's residence to require the rescission of any such ordinance, regulation, or rule, for the imposition of civil fines as provided elsewhere in this statute, for an award of damages as provided for herein, and for an award of the reasonable attorneys' fees and costs of the person bringing the action, including such attorneys' fees and costs in all courts and on appeal. The aggrieved citizen of this state giving such notice shall be deemed to have standing to bring suit under this section.

IV. If the court determines that a violation was inadvertent or the result of simple negligence, the court shall assess a civil fine of \$500 against the county, city, town, or other local government entity or other public or private organization or entity that enacted any such ordinance, regulation, or rule for the first violation, a civil fine of up to \$1,000 for a second violation, and a civil fine of up to \$2,500 for a third or subsequent violation. If the court determines that a violation was committed purposely or knowingly, or committed recklessly or as the result of gross negligence, the court shall assess a civil fine of up to \$5,000 against the county, city, town, or other local government entity or other public or private organization or entity that enacted any such ordinance, regulation, or rule. Any such civil fines shall not be payable by any insurance carried at taxpayer expense or by any tax monies.

V. Except as otherwise required in statute, public funds or insurance purchased with public funds shall not be used to defend or reimburse the unlawful conduct of any person or entity found to have purposely or knowingly violated this section.

VI. A purposeful or knowing violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under this section or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the governor.

VII. Any citizen of this state, entity, or organization whose membership is aggrieved by any ordinance, regulation, measure, directive, rule, enactment, order, or policy enacted, adopted or enforced in violation of this section may, after giving notice as provided for in paragraph III and after expiration of the 90-day time period, file suit in the superior court of the petitioner's residence against any county, agency, municipality, school district, school administrative unit, or other entity that enacted any such ordinance, regulation, or rule for declaratory and injunctive relief and for damages caused by the violation. Upon such filing, the court shall schedule a hearing on the matter which shall be within 10 days, excluding Saturdays, Sundays, and legal holidays, from the date of filing. Any citizen of this state, entity, or organization whose membership is aggrieved by any ordinance, regulation, measure, directive, rule, enactment, order, or policy enacted, adopted or enforced in violation of this section shall be deemed to have standing to bring an action under this section. After a hearing on the merits, if the court finds in favor of the petitioner, the court shall:

(a) Issue an injunction against the person, or public or private organization or entity, or political subdivision from enacting or enforcing the ordinance, regulation, or rule;

- (b) Issue a declaratory judgment that the ordinance, regulation, or rule is void and unenforceable;
- (c) Award the prevailing petitioner in any such suit reasonable attorney's fees and costs, including a contingency fee multiplier if the petitioner was represented by counsel working on the basis of a contingent fee, including such attorneys' fees and costs in all tribunals and on appeal; and
- (d) Award to the successful petitioner bringing the action liquidated damages in the amount of \$100,000 against the defendant county, agency, municipality, school district, school administrative unit, or other entity, as applicable.

VIII. Except as otherwise required in statute, public funds or insurance purchased with public funds shall not be used to defend any such action, and any such damages, attorneys' fees and costs shall not be payable by any insurance carried at taxpayer expense. Interest on the sums awarded pursuant to this section shall accrue at the legal rate from the date on which suit was filed.

159:29 Exceptions. This subdivision shall not prohibit:

I. Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, repair or manufacture of firearms or ammunition or ammunition components or knives or regulating the sale of firearms accessories as a method of regulating firearms or ammunition or ammunition components or knives are in conflict with this subdivision, are prohibited, and are hereby declared to be null and void.

II. A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, ammunition components, firearm accessories or knives issued to or used by peace officers in the course of their official duties.

III. A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge.

4 Effective Date. This act shall take effect upon its passage.