

1 SB358
2 209088-4
3 By Senator Allen
4 RFD: Governmental Affairs
5 First Read: 30-MAR-21

SYNOPSIS: Under existing constitutional law, the federal government may not require a state or its officers to administer or enforce a federal regulatory program.

This bill would create the Alabama Second Amendment Preservation Act to prohibit the state and its agencies and political subdivisions from participating in the enforcement of any federal act, law, order, rule, or regulation relating to firearms, firearm accessories, or ammunition.

This bill would also provide criminal penalties for a violation.

Under existing constitutional law, the United States Congress is given the authority to regulate interstate commerce.

This bill would provide that firearms, firearm accessories, and ammunition that are manufactured in this state and remain in this state, and are therefore only engaged in intrastate commerce, are not subject to federal law or

1 regulation, including registration, under the
2 authority of the United State Congress to regulate
3 interstate commerce.

4 Amendment 621 of the Constitution of Alabama
5 of 1901, now appearing as Section 111.05 of the
6 Official Recompilation of the Constitution of
7 Alabama of 1901, as amended, prohibits a general
8 law whose purpose or effect would be to require a
9 new or increased expenditure of local funds from
10 becoming effective with regard to a local
11 governmental entity without enactment by a 2/3 vote
12 unless: it comes within one of a number of
13 specified exceptions; it is approved by the
14 affected entity; or the Legislature appropriates
15 funds, or provides a local source of revenue, to
16 the entity for the purpose.

17 The purpose or effect of this bill would be
18 to require a new or increased expenditure of local
19 funds within the meaning of the amendment. However,
20 the bill does not require approval of a local
21 governmental entity or enactment by a 2/3 vote to
22 become effective because it comes within one of the
23 specified exceptions contained in the amendment.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to firearms; to provide prohibitions on the
3 enforcement of federal laws relating to firearms and
4 accessories and ammunition thereof; to provide criminal
5 penalties for a violation; to provide that certain firearms,
6 firearm accessories, and ammunition that are manufactured in
7 this state are not subject to federal law or regulation; and
8 in connection therewith would have as its purpose or effect
9 the requirement of a new or increased expenditure of local
10 funds within the meaning of Amendment 621 of the Constitution
11 of Alabama of 1901, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of Alabama of 1901,
13 as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. This act shall be known and may be cited
16 as the Alabama Second Amendment Preservation Act.

17 Section 2. (a) The Legislature finds and declares
18 all of the following:

19 (1) The Second Amendment to the United States
20 Constitution protects an individual's right to "keep and bear
21 arms" and further provides that the right to keep and bear
22 arms may not be infringed.

23 (2) It is the intent of the Legislature to protect
24 Alabama employees, including law enforcement officers, from
25 being directed, through federal executive orders, agency
26 orders, statutes, laws, rules, or regulations that violate
27 their oath of office and individual rights affirmed under the

1 Second Amendment of the United States Constitution and Section
2 26 of the Constitution of Alabama of 1901.

3 (3) Pursuant to and in furtherance of the principles
4 of federalism enshrined in the United States Constitution, the
5 federal government may not commandeer this state's officers,
6 agents, or employees to participate in the enforcement or
7 facilitation of any federal program not expressly required by
8 the United States Constitution.

9 (4) The right to be free from the commandeering hand
10 of the federal government has been most notably recognized by
11 the United States Supreme Court in *Printz v. United States*,
12 521 U.S. 898 (1997), when the Court held: "The Federal
13 Government may neither issue directives requiring the States
14 to address particular problems, nor command the States'
15 officers, or those of their political subdivisions, to
16 administer or enforce a federal regulatory program."

17 (5) The anti-commandeering principles recognized by
18 the U.S. Supreme Court in *Printz* are predicated upon the
19 advice of James Madison, who, in *The Federalist* No. 46, argued
20 for a "refusal to cooperate with officers of the Union" when
21 faced with unconstitutional federal measures or
22 constitutional, but unpopular, federal measures.

23 (b)(1) Notwithstanding any provision of law to the
24 contrary, no public funds of this state or any political
25 subdivision of this state may be allocated for the
26 implementation, regulation, or enforcement of any executive
27 order or directive issued by the President of the United

1 States, or of any act of the United States Congress, that
2 becomes effective after January 1, 2021, that regulates the
3 ownership, use, or possession of firearms, ammunition, or
4 firearm accessories.

5 (2) Notwithstanding any provision of law to the
6 contrary, no property of this state, or any political
7 subdivision of this state, shall be allocated for the
8 implementation, regulation, or enforcement of any executive
9 order or directive issued by the President of the United
10 States, or any act of the United States Congress, that becomes
11 effective after January 1, 2021, that regulates the ownership,
12 use, or possession of firearms, ammunition, or firearm
13 accessories.

14 (3) Notwithstanding any provision of law to the
15 contrary, no appointed or elected official, officer, employee,
16 or agent of the state, or any political subdivision of the
17 state, when acting in an official capacity, shall implement,
18 administer, or enforce an executive order or directive issued
19 by the President of the United States, or any act of the
20 United States Congress, that becomes effective after January
21 1, 2021, that regulates the ownership, use, or possession of
22 firearms, ammunition, or firearm accessories.

23 (c)(1) Any appointed or elected official, officer,
24 employee, or agent of the state, or any political subdivision
25 of the state, who knowingly violates this section, on a first
26 violation, shall be guilty of a Class C misdemeanor and shall

1 be fined not less than five hundred dollars (\$500) or more
2 than five thousand dollars (\$5,000).

3 (2) An appointed or elected official, officer,
4 employee, or agent of the state, or any political subdivision
5 of the state, who knowingly violates this section, on a second
6 or subsequent violation, shall be guilty of a Class B
7 misdemeanor and shall be fined not less than one thousand
8 dollars (\$1,000) or more than seven thousand dollars (\$7,000).

9 Section 3. (a) (1) Upon the adoption of a rule,
10 order, ordinance, resolution, or other official policy by a
11 political subdivision of the state which intentionally
12 requires actions that violate Section 2, a resident of this
13 state may file a complaint with the Attorney General. The
14 complaint shall include evidence supporting an allegation that
15 the political subdivision has adopted a rule, order,
16 ordinance, resolution, or policy under which the entity
17 enforces a federal law in violation of Section 2.

18 (2) If the Attorney General determines that a
19 complaint filed under subdivision (1) is valid, the Attorney
20 General may petition the court to compel compliance with this
21 act. The petition shall be filed in the circuit court of the
22 county in which the principal office of the political
23 subdivision is located.

24 (3) Upon a finding that political subdivision is in
25 violation of Section 2, the court shall award the Attorney
26 General reasonable expenses incurred in obtaining relief under

1 this section, including court costs, reasonable attorney's
2 fees, investigative costs, witness fees, and deposition costs.

3 (b) Following the year in which a final judicial
4 determination in an action brought under this section is made
5 that the political subdivision has intentionally required
6 actions that violate Section 2, all state grant funds for the
7 political subdivision shall be denied for the fiscal year. The
8 state grant funds shall continue to be denied for each
9 subsequent fiscal year unless and until the political
10 subdivision is in full compliance with Section 2.

11 Section 4. (a) The Legislature finds and declares
12 all of the following:

13 (1) The Tenth Amendment to the United States
14 Constitution guarantees to the states and their people all
15 powers not granted to the federal government elsewhere in the
16 United States Constitution and reserves to the State of
17 Alabama and its people certain powers as they were understood
18 at the time that Alabama was admitted to statehood in 1819,
19 and the guaranty of these powers is a matter of contract
20 between the State of Alabama and its people and the United
21 States as of the time that the compact with the United States
22 was agreed upon and adopted by Alabama and the United States
23 in 1819.

24 (2) The Ninth Amendment to the United States
25 Constitution guarantees to the people rights not granted in
26 the United States Constitution and reserves to the people of
27 Alabama certain rights as they were understood at the time

1 Alabama was admitted into statehood in 1819, and the guaranty
2 of these rights is a matter of contract between the State of
3 Alabama and its people and the United States as of the time
4 that the compact with the United States was agreed upon and
5 adopted by Alabama and the United States in 1819.

6 (3) The power to regulate intrastate commerce is
7 vested in the several states under the Ninth and Tenth
8 Amendments to the United States Constitution.

9 (4) The Second Amendment to the United States
10 Constitution reserves to the people the right to keep and bear
11 arms as that right was understood at the time that Alabama was
12 admitted into statehood in 1819, and the guaranty of that
13 right is a matter of contract between the State of Alabama and
14 its people and the United States as of the time that the
15 compact with the United States was agreed upon and adopted by
16 Alabama and the United States in 1819.

17 (b) As used in this section, the following terms
18 shall have the following meanings:

19 (1) FIREARM ACCESSORY. An item that is used in
20 conjunction with or mounted onto a firearm, but is not
21 essential to the basic function of the firearm. The term
22 includes a telescopic or laser sight, magazine, flash or sound
23 suppressor, folding or aftermarket stock and grip,
24 speedloader, ammunition carrier, and light for target
25 illumination.

26 (2) GENERIC AND INSIGNIFICANT PART. An item that has
27 manufacturing or consumer product applications other than

1 inclusion in a firearm, a firearm accessory, or ammunition.
2 The term includes a spring, screw, nut, and pin.

3 (3) MANUFACTURED IN THIS STATE. An item that is
4 manufactured in this state from basic materials and without
5 the inclusion of any part imported from another state other
6 than a generic and insignificant part. Notwithstanding the
7 foregoing, a firearm is manufactured in this state if it is
8 manufactured as described in the preceding sentence without
9 regard to whether a firearm accessory or ammunition imported
10 into this state from another state is attached to or used in
11 conjunction with it.

12 (4) MANUFACTURING. The term includes forging,
13 casting, machining, or any other process used for working a
14 material.

15 (c) Subject to subsection (e), a firearm, a firearm
16 accessory, or ammunition that is commercially or privately
17 manufactured in Alabama, that is sold in Alabama, and that
18 remains within the borders of Alabama is not subject to
19 federal law or regulation, including registration, under the
20 authority of the United State Congress to regulate interstate
21 commerce, as the item has not traveled in interstate commerce.

22 (d)(1) This section applies to firearms, ammunition,
23 or firearm accessories that are manufactured in Alabama from
24 basic materials and that can be manufactured without the
25 inclusion of any significant parts imported from another
26 state.

1 (2) Generic and insignificant parts that have other
2 manufacturing or consumer product applications are not
3 firearms, ammunition, or firearm accessories, and their
4 importation into Alabama and incorporation into a firearm,
5 ammunition, or a firearm accessory manufactured in Alabama
6 does not subject the firearm, ammunition, or firearm accessory
7 to federal regulation.

8 (3) A basic material from which a firearm, a firearm
9 accessory, or ammunition is manufactured in this state,
10 including unmachined steel and unshaped wood, is not a
11 firearm, a firearm accessory, or ammunition and is not subject
12 to federal regulation under the authority of the United States
13 Congress to regulate interstate commerce as if it actually
14 were a firearm, a firearm accessory, or ammunition.

15 (e) A firearm manufactured in this state is exempt
16 from federal law or regulation under subsection (c) only if
17 the firearm has the words "Made in Alabama" clearly stamped on
18 a central metallic part of the firearm, such as the receiver
19 or frame.

20 (f) The Attorney General shall defend a resident of
21 this state whom the federal government attempts to prosecute,
22 claiming the power to regulate interstate commerce, for a
23 violation of a federal law or regulation concerning the
24 manufacture, sale, transfer, or possession of firearms,
25 ammunition, or firearm accessories manufactured and retained
26 in this state.

1 (g) This section does not apply to any of the
2 following:

3 (1) A firearm that cannot be carried and used by one
4 person.

5 (2) A firearm that has a bore diameter greater than
6 1.5 inches and that uses smokeless powder and not black powder
7 as a propellant.

8 (3) Ammunition with a projectile that explodes using
9 an explosion of chemical energy after the projectile leaves
10 the firearm.

11 (4) A firearm that discharges two or more
12 projectiles with one activation of the trigger or other firing
13 device.

14 Section 5. (a) The following federal acts, laws,
15 executive orders, administrative orders, court orders, rules,
16 and regulations shall be considered infringements on the
17 people's right to keep and bear arms, as guaranteed by the
18 Second Amendment to the United States Constitution, within the
19 borders of this state, including, but not limited to, all of
20 the following:

21 (1) Any tax, levy, fee, or stamp imposed on
22 firearms, ammunition, or firearm accessories not common to all
23 other goods and services that might reasonably be expected to
24 create a chilling effect on the purchase or ownership of those
25 items by law abiding residents of the state.

26 (2) Any registration or tracking of firearms,
27 ammunition, or firearm accessories that might reasonably be

1 expected to create a chilling effect on the purchase or
2 ownership of those items by law abiding residents of the
3 state.

4 (3) Any registration or tracking of the owners of
5 firearms, ammunition, or firearm accessories that might
6 reasonably be expected to create a chilling effect on the
7 purchase or ownership of those items by law abiding residents
8 of the state.

9 (4) Any act forbidding the possession, ownership,
10 use, or transfer of a firearm, ammunition, or firearm
11 accessory by law abiding residents of the state.

12 (5) Any act ordering the confiscation of firearms,
13 ammunition, or firearm accessories from law abiding residents
14 of the state.

15 (b) A federal act, law, executive order,
16 administrative order, court order, rule, or regulation that
17 infringes on a person's right to keep and bear arms as
18 provided under subsection (a) shall be void and of no effect
19 in this state.

20 (c) As used in this section, the term "law abiding
21 residents of the state" includes those individuals not
22 otherwise precluded under state law from possessing a firearm.

23 Section 6. The provisions of this act are severable
24 and if any provision of this act or the application of such
25 provision to any person or circumstance is declared invalid
26 for any reason, such declaration shall not affect the validity
27 of the remaining portions of this act.

1 Section 7. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.