

**HB 307 - AS AMENDED BY THE HOUSE**

7Apr2021... 0411h

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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**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 regulation of firearms; ammunition; ammunition components; knives; firearms components; firearms accessories; and firearms supplies 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 The subdivision heading preceding RSA 159:26 and RSA 159:26 are repealed and reenacted to read as follows: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; firearms components; firearms accessories; and firearms supplies; to prohibit the enactment of any future ordinances or regulations relating to firearms; ammunition; ammunition components; knives; firearms components; firearms

accessories; and firearms supplies 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; ammunition; ammunition components; knives; firearms components; firearms accessories; and firearms supplies 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; ammunition components; knives; firearms components; firearms accessories; and firearms supplies 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; firearms components; firearms accessories; and firearms supplies, 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 firearms; ammunition; ammunition components; knives; firearms components; firearms accessories; and firearms supplies 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. A superior court having jurisdiction over the defendant or defendants 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 and any 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 that violates the provisions of this subdivision and shall issue a permanent injunction against the political subdivision or private entity, as applicable, 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 or 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, 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 residing within the geographic boundaries within which the applicable county, city, town, or other local government entity, or other public or private organization or entity is located and 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 of receiving such notice, rescind any such ordinance, regulation, rule or policy 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, rule, or policy fails or refuses to rescind such ordinance, regulation, or rule, such citizen of this state claiming to be so aggrieved and who has given such notice may bring an action in the superior court for the county in which the applicable county, city, town, or other local government entity, or other public or private organization or entity is located to require the rescission of any such ordinance, regulation, rule, or policy and may be awarded 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, rule, or policy 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, rule, or policy.

V. 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 or policy 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.

VI. Any citizen of this state residing within the geographic boundaries within which the applicable county, city, town, or other local government entity, or other public or private organization or entity aggrieved by any ordinance, regulation, measure, directive, rule, enactment, order, or policy enacted, adopted or enforced in violation of this section is located 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 county in which the applicable county, city, town, or other local government entity, or other public or private organization or entity is located against any county, agency, municipality, school district, school administrative unit, or other entity that enacted any such ordinance, regulation, rule or policy 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 residing within the geographic boundaries within which the applicable county, city, town, or other local government entity, or other public or private organization or entity aggrieved by any ordinance, regulation, measure, directive, rule, enactment, order, or policy enacted, adopted or enforced in violation of this section, as well as any 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, rule, or policy;
- (b) Issue a declaratory judgment that the ordinance, regulation, rule, or policy 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 \$10,000 against the defendant county, agency, municipality, school district, school administrative unit, or other entity, as applicable.

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.

159:30 Savings Provision. In the event that any of the terms or provisions of this act are declared invalid or unenforceable by any court of competent jurisdiction, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

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