

Representative A. Cory Maloy proposes the following substitute bill:

FIREARM PREEMPTION AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill clarifies that the Legislature has preempted the field of firearm regulation for the state.

Highlighted Provisions:

This bill:

- ▶ creates the Firearms Preemption Enforcement Act;
- ▶ clarifies preemption of the field of firearms regulation;
- ▶ defines terms;
- ▶ outlines violations of legislative preemption;
- ▶ provides for civil action for a violation of legislative preemption;
- ▶ outlines remedies for violating legislative preemption;
- ▶ addresses governmental immunity; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



AMENDS:

47-3-303, as enacted by Laws of Utah 2013, Chapter 155

53-5a-102, as last amended by Laws of Utah 2013, Chapter 278

63G-7-301, as last amended by Laws of Utah 2019, Chapters 229 and 248

76-10-500, as enacted by Laws of Utah 1999, Chapter 5

76-10-501, as last amended by Laws of Utah 2015, Chapters 212 and 406

ENACTS:

53-5a-103.5, Utah Code Annotated 1953

78B-6-2201, Utah Code Annotated 1953

78B-6-2202, Utah Code Annotated 1953

78B-6-2203, Utah Code Annotated 1953

78B-6-2204, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **47-3-303** is amended to read:

47-3-303. Rulemaking.

(1) The State Armory Board, any state agency, or institution of higher education that operates or has control of a shooting range shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement procedures for use of the range by the public.

(2) The rules shall include provisions requiring indoor shooting ranges to be available on a reservation basis, for firearms not exceeding the range design criteria:

(a) at least twice per week;

(b) after 4 p.m. on work or school days, or after students and faculty are excused or dismissed on the work or school day; and

(c) between 8 a.m. and 10 p.m. on weekends.

(3) A political subdivision may enact an ordinance, rule, or resolution regarding the use of public shooting ranges, facilities, and targets, to include limits on the use of firearms and ammunition within the range design criteria.

Section 2. Section **53-5a-102** is amended to read:

53-5a-102. Uniform firearm laws.

(1) In addition to the definitions in Section 76-10-501, "local authority" and "state

agency" mean the same as those terms are defined in Section [78B-6-2202](#).

(2) The individual right to keep and bear arms being a constitutionally protected right under Article I, Section 6 of the Utah Constitution and the Second Amendment to the United States Constitution, the Legislature finds the need to provide uniform civil and criminal firearm laws throughout the state, and declares that the Legislature occupies the whole field of state regulation of firearms and ammunition.

~~[(2)]~~ (3) Except as specifically provided by state law, a local authority or state entity may not:

(a) prohibit an individual from owning, possessing, purchasing, selling, transferring, transporting, or keeping a firearm at the individual's place of residence, property, business, or in any vehicle lawfully in the individual's possession or lawfully under the individual's control; or

(b) require an individual to have a permit or license to purchase, own, possess, transport, or keep a firearm, ammunition, or firearm accessory.

~~[(3)]~~ (4) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is uniformly applicable throughout this state and in all ~~[its]~~ the state's political subdivisions ~~[and municipalities]~~.

~~[(4)]~~ (5) ~~[All authority]~~ Authority to regulate firearms is reserved to the state except where the Legislature specifically delegates responsibility to a local ~~[authorities]~~ authority or state ~~[entities]~~ agency.

~~[(5)]~~ (6) Unless specifically authorized by the Legislature by statute, a local authority or state ~~[entity]~~ agency, including organizations or vendors that contract with a local authority or state agency, may not enact, establish, or enforce any ordinance, regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the possession, transfer, or use of firearms on either public or private property.

~~[(6) As used in this section:]~~

~~[(a) "firearm" has the same meaning as defined in Section [76-10-501](#); and]~~

~~[(b) "local authority or state entity" includes public school districts, public schools, and state institutions of higher education.]~~

(7) Nothing in this section restricts or expands private property rights.

Section 3. Section **63G-7-301** is amended to read:

§ 53-5a-103.5. Homeless Shelters.

(1) As used in this section, "homeless shelter" means a facility that provides temporary shelter to homeless individuals and has the capacity to provide temporary shelter to at least 20 individuals per night.

(2) A local government entity may prohibit the possession of firearms within a homeless shelter over which it exercises authority. ←H

63G-7-301. Waivers of immunity.

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

- 119 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:
- 120 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
- 121 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
- 122 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
- 123 or other public improvement;
- 124 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
- 125 proximately caused by a negligent act or omission of an employee committed within the scope
- 126 of employment;
- 127 (j) as to any action or suit brought under Section 20A-19-301 and as to any
- 128 compensation or expenses awarded under Section 20A-19-301(5); and
- 129 (k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
- 130 a sexual battery, as provided in Section 76-9-702.1, committed:
- 131 (i) against a student of a public elementary or secondary school, including a charter
- 132 school; and
- 133 (ii) by an employee of a public elementary or secondary school or charter school who:
- 134 (A) at the time of the sexual battery, held a position of special trust, as defined in
- 135 Section 76-5-404.1, with respect to the student;
- 136 (B) is criminally charged in connection with the sexual battery; and
- 137 (C) the public elementary or secondary school or charter school knew or in the exercise
- 138 of reasonable care should have known, at the time of the employee's hiring, to be a sex
- 139 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
- 140 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
- 141 background check under Section 53G-11-402.
- 142 (3) (a) As used in this Subsection (3):
- 143 (i) "Appropriate behavior policy" means a policy that:
- 144 (A) is not less stringent than a model policy, created by the State Board of Education,
- 145 establishing a professional standard of care for preventing the conduct described in Subsection
- 146 (3)(a)(i)(D);
- 147 (B) is adopted by the applicable local education governing body;
- 148 (C) regulates behavior of a school employee toward a student; and
- 149 (D) includes a prohibition against any sexual conduct between an employee and a

student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

(C) the Utah Schools for the Deaf and the Blind.

(iii) "Local education governing board" means:

(A) for a school district, the local school board;

(B) for a charter school, the charter school governing board; or

(C) for the Utah Schools for the Deaf and the Blind, the state board.

(iv) "Public school" means a public elementary or secondary school.

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

(vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:

(i) at the time of the sexual battery or sexual abuse, the public school was subject to an appropriate behavior policy; and

(ii) before the sexual battery or sexual abuse occurred, the public school had:

(A) provided training on the policy to the employee; and

(B) required the employee to sign a statement acknowledging that the employee has read and understands the policy.

(4) (a) As used in this Subsection (4):

(i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the State Board of Regents that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

(C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and

(D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.

(iii) "Sexual battery" means the offense described in Section 76-9-702.1.

(iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.

(v) "Subordinate student" means a student:

(A) of a higher education institution; and

(B) whose educational opportunities could be adversely impacted by a special trust employee.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:

(i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:

(A) with a subordinate student who was at least 18 years old at the time of the behavior; and

(B) with the student's consent; or

(ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and

(B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

(5) Immunity from suit of each governmental entity and its employees or agents is waived with respect to the provisions of Title 78B, Chapter 6, Part 22, Firearms Preemption Enforcement Act.

Section 4. Section 76-10-500 is amended to read:

76-10-500. Uniform law.

(1) The individual right to keep and bear arms being a constitutionally protected right

under Article I, Section 6 of the Utah Constitution and the Second Amendment to the United States Constitution, the Legislature finds the need to provide uniform civil and criminal laws throughout the state, and declares that the Legislature occupies the whole field of state regulation of firearms and ammunition.

(2) Except as specifically provided by state law, ~~[a citizen of the United States or a lawfully admitted alien shall not be]~~ a local authority or state agency may not:

(a) ~~[prohibited]~~ prohibit an individual from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm ~~[at his]~~, ammunition, or firearm accessory at the individual's place of residence, property, business, or in any vehicle lawfully in ~~[his]~~ the individual's possession or lawfully under ~~[his]~~ the individual's control; or

(b) ~~[required]~~ require an individual to have a permit or license to purchase, own, possess, transport, or keep a firearm, ammunition, or firearm accessory.

~~[(2)]~~ (3) This part is uniformly applicable throughout this state and in all ~~[its]~~ the state's political subdivisions ~~[and municipalities]~~.

(4) ~~[All authority]~~ Authority to regulate firearms ~~[shall be]~~ is reserved to the state except where the Legislature specifically delegates responsibility to a local ~~[authorities]~~ authority or state ~~[entities]~~ agency.

(5) Unless specifically authorized by the Legislature by statute, a local authority or state ~~[entity]~~ agency may not enact or enforce any ordinance, regulation, ~~[or]~~ rule, or policy pertaining to firearms that in any way inhibits or restricts the possession or use of firearms, ammunition, or a firearm accessory on either public or private property.

(6) Nothing in this part restricts or expands private property rights.

Section 5. Section **76-10-501** is amended to read:

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means:

(i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; or

(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed

ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed

ammunition.

(b) "Antique firearm" does not include:

(i) a weapon that incorporates a firearm frame or receiver;

(ii) a firearm that is converted into a muzzle loading weapon; or

(iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(3) (a) "Concealed firearm" means a firearm that is:

(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and

(ii) readily accessible for immediate use.

(b) A firearm that is unloaded and securely encased is not a concealed firearm for the purposes of this part.

(4) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the bureau or the local law enforcement agency where the firearms dealer conducts business.

(5) "Curio or relic firearm" means a firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

- 274 (i) sporting use;
- 275 (ii) use as an offensive weapon; or
- 276 (iii) use as a defensive weapon;
- 277 (b) (i) was manufactured at least 50 years before the current date; and
- 278 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);
- 279 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
- 280 firearms to be a curio or relic of museum interest;
- 281 (d) derives a substantial part of its monetary value:
- 282 (i) from the fact that the firearm is:
- 283 (A) novel;
- 284 (B) rare; or
- 285 (C) bizarre; or
- 286 (ii) because of the firearm's association with an historical:
- 287 (A) figure;
- 288 (B) period; or
- 289 (C) event; and
- 290 (e) has been designated as a curio or relic firearm by the director of the United States
- 291 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.
- 292 (6) (a) "Dangerous weapon" means:
- 293 (i) a firearm; or
- 294 (ii) an object that in the manner of its use or intended use is capable of causing death or
- 295 serious bodily injury.
- 296 (b) The following factors are used in determining whether any object, other than a
- 297 firearm, is a dangerous weapon:
- 298 (i) the location and circumstances in which the object was used or possessed;
- 299 (ii) the primary purpose for which the object was made;
- 300 (iii) the character of the wound, if any, produced by the object's unlawful use;
- 301 (iv) the manner in which the object was unlawfully used;
- 302 (v) whether the manner in which the object is used or possessed constitutes a potential
- 303 imminent threat to public safety; and
- 304 (vi) the lawful purposes for which the object may be used.

(c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device as defined by Section 76-10-306.

(7) "Dealer" means a person who is:

(a) licensed under 18 U.S.C. Sec. 923; and

(b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(8) "Enter" means intrusion of the entire body.

(9) "Federal Firearms Licensee" means a person who:

(a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

(b) is engaged in the activities authorized by the specific category of license held.

(10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.

(11) "Firearms transaction record form" means a form created by the bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

(12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

(13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.

(14) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

(15) "Local authority" means the same as that term is defined in Section 78B-6-2202.

~~[(15)]~~ (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

[~~(16)~~] (17) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

[~~(17)~~] (18) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

[~~(18)~~] (19) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

[~~(19)~~] (20) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

[~~(20)~~] (21) "Shotgun" means a smooth bore firearm designed to fire cartridges containing pellets or a single slug.

[~~(21)~~] (22) "Shoulder arm" means a firearm that is designed to be fired while braced against the shoulder.

[~~(22)~~] (23) "Slug" means a single projectile discharged from a shotgun shell.

[~~(23)~~] (24) "State agency" or "entity" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state, including the Board of Regents, each institution of higher education, and the boards of trustees of each higher education institution.

[~~(24)~~] (25) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

Section 6. Section **78B-6-2201** is enacted to read:

Part 22. Firearm Preemption Enforcement Act

78B-6-2201. Firearm Preemption Enforcement Act.

This part is known as the "Firearm Preemption Enforcement Act."

Section 7. Section **78B-6-2202** is enacted to read:

78B-6-2202. Definitions.

As used in this part:

(1) "Ammunition" means a bullet, a cartridge case, primer, propellant powder, or other ammunition designed for use in any firearm, either as an individual component part or in a completely assembled cartridge.

(2) "Firearm" means the same as that term is defined in Section [76-10-501](#).

(3) "Firearm accessory" means an item that is legal to use in conjunction with or mounted upon a firearm, firearm action, or firearm receiver, but is not essential to the basic function of a firearm.

(4) "Legislative preemption" means the preemption provided for in Sections [53-5a-102](#) and [76-10-500](#).

(5) "Local authority" means a county, city, town, metro township, local district, local education agency, public school, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.

(6) "Local education agency" means a school district or charter school.

(7) "State agency" means the same as that term is defined in Section [76-10-501](#).

Section 8. Section **78B-6-2203** is enacted to read:

78B-6-2203. Violation of legislative preemption -- Exceptions.

(1) A local authority or state agency that enacts or enforces an ordinance, regulation, measure, directive, rule, enactment, order, or policy that violates legislative preemption is liable as provided in this part.

(2) An ordinance, regulation, measure, directive, rule, enactment, order, or policy that violates legislative preemption is void.

(3) This part does not prohibit:

(a) a law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by a peace officer in the course of the peace officer's official duties;

(b) a court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter consistent with state law within the jurisdiction of that court or administrative law judge;

(c) a rule of a correctional facility or mental or behavioral health facility under Section 76-8-311.3; or

(d) a local authority or state agency from enacting or enforcing an ordinance, regulation, measure, directive, rule, enactment, order, or policy, developed in response to and in accordance with legislative authority.

Section 9. Section **78B-6-2204** is enacted to read:

78B-6-2204. Civil action -- Injunction.

(1) An individual who is harmed by a local authority or state agency that makes or causes to be enforced an ordinance, regulation, measure, directive, rule, enactment, order, or policy in violation of legislative preemption may:

(a) request that the local authority rescind or repeal the ordinance, regulation, measure, directive, rule, enactment, order, or policy; or

(b) if the local authority declines to rescind or repeal the ordinance, regulation, measure, directive, rule, enactment, order, or policy, file suit against the local authority or state agency in any court of this state having jurisdiction over the local authority or state agency.

(2) If the court determines that a local authority or state agency violated legislative preemption, the court shall:

(a) order that the relevant ordinance, regulation, measure, directive, rule, enactment, order, or policy is void;

(b) issue a permanent injunction against the local authority or state agency prohibiting the local authority or state agency from enforcing the void ordinance, regulation, measure, directive, rule, enactment, order, or policy; and

(c) award to the prevailing party:

(i) actual damages, which includes the cost of time in bringing the civil action, or defending against the action;

(ii) reasonable attorney fees and costs in accordance with the laws of this state; and

(iii) interest on the sums awarded pursuant to this Subsection (2) accrued at the legal rate from the date on which the suit is filed.

(3) In accordance with Subsection 63G-7-301(5), a state agency or local authority that violates this part is not immune from suit or liability for the violation ~~It is the intent of the Legislature that~~ **individual acting**

~~in an official capacity for a state agency or local authority who knowingly or willfully violates~~

429 this part is not immune from suit or liability for the violation.] ←H