

**FIREARM PREEMPTION AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: A. Cory Maloy**

Senate Sponsor: \_\_\_\_\_

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**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 and fines 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:

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



28 76-10-500, as enacted by Laws of Utah 1999, Chapter 5

29 76-10-501, as last amended by Laws of Utah 2015, Chapters 212 and 406

30 ENACTS:

31 78B-6-2201, Utah Code Annotated 1953

32 78B-6-2202, Utah Code Annotated 1953

33 78B-6-2203, Utah Code Annotated 1953

34 78B-6-2204, Utah Code Annotated 1953

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

37 Section 1. Section 53-5a-102 is amended to read:

38 **53-5a-102. Uniform firearm laws.**

39 (1) In addition to the definitions in Section 76-10-501, "local authority" and "state  
40 agency" mean the same as those terms are defined in Section 78B-6-2202.

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

46 [~~2~~] (3) Except as specifically provided by state law, a local authority or state entity  
47 may not:

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

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

54 [~~3~~] (4) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is  
55 uniformly applicable throughout this state and in all [~~its~~] the state's political subdivisions [~~and~~  
56 municipalities].

57 [~~4~~] (5) [~~All authority~~] Authority to regulate firearms is reserved to the state except  
58 where the Legislature specifically delegates responsibility to a local [~~authorities~~] authority or

59 state ~~[entities]~~ agency.

60 ~~[(5)]~~ (6) Unless specifically authorized by the Legislature by statute, a local authority  
61 or state ~~[entity]~~ agency may not enact, establish, or enforce any ordinance, regulation, rule, or  
62 policy pertaining to firearms that in any way inhibits or restricts the possession, transfer, or use  
63 of firearms on either public or private property.

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

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

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

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

69 Section 2. Section **76-10-500** is amended to read:

70 **76-10-500. Uniform law.**

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

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

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

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

84 ~~[(2)]~~ (3) This part is uniformly applicable throughout this state and in all ~~[its]~~ the state's  
85 political subdivisions [and municipalities].

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

89 (5) Unless specifically authorized by the Legislature by statute, a local authority or

90 state ~~[entity]~~ agency may not enact or enforce any ordinance, regulation, ~~[or]~~ rule, or policy  
91 pertaining to firearms that in any way inhibits or restricts the possession or use of firearms,  
92 ammunition, or a firearm accessory on either public or private property.

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

94 Section 3. Section **76-10-501** is amended to read:

95 **76-10-501. Definitions.**

96 As used in this part:

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

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

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

102 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed  
103 ammunition; or

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

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

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

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

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

110 (b) "Antique firearm" does not include:

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

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

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

115 (A) barrel;

116 (B) bolt;

117 (C) breechblock; or

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

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

- 121 (3) (a) "Concealed firearm" means a firearm that is:  
122 (i) covered, hidden, or secreted in a manner that the public would not be aware of its  
123 presence; and  
124 (ii) readily accessible for immediate use.  
125 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the  
126 purposes of this part.
- 127 (4) "Criminal history background check" means a criminal background check  
128 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal  
129 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms  
130 dealer conducts business.
- 131 (5) "Curio or relic firearm" means a firearm that:  
132 (a) is of special interest to a collector because of a quality that is not associated with  
133 firearms intended for:  
134 (i) sporting use;  
135 (ii) use as an offensive weapon; or  
136 (iii) use as a defensive weapon;  
137 (b) (i) was manufactured at least 50 years before the current date; and  
138 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);  
139 (c) is certified by the curator of a municipal, state, or federal museum that exhibits  
140 firearms to be a curio or relic of museum interest;  
141 (d) derives a substantial part of its monetary value:  
142 (i) from the fact that the firearm is:  
143 (A) novel;  
144 (B) rare; or  
145 (C) bizarre; or  
146 (ii) because of the firearm's association with an historical:  
147 (A) figure;  
148 (B) period; or  
149 (C) event; and  
150 (e) has been designated as a curio or relic firearm by the director of the United States  
151 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

- 152 (6) (a) "Dangerous weapon" means:
- 153 (i) a firearm; or
- 154 (ii) an object that in the manner of its use or intended use is capable of causing death or
- 155 serious bodily injury.
- 156 (b) The following factors are used in determining whether any object, other than a
- 157 firearm, is a dangerous weapon:
- 158 (i) the location and circumstances in which the object was used or possessed;
- 159 (ii) the primary purpose for which the object was made;
- 160 (iii) the character of the wound, if any, produced by the object's unlawful use;
- 161 (iv) the manner in which the object was unlawfully used;
- 162 (v) whether the manner in which the object is used or possessed constitutes a potential
- 163 imminent threat to public safety; and
- 164 (vi) the lawful purposes for which the object may be used.
- 165 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
- 166 as defined by Section [76-10-306](#).
- 167 (7) "Dealer" means a person who is:
- 168 (a) licensed under 18 U.S.C. Sec. 923; and
- 169 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
- 170 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.
- 171 (8) "Enter" means intrusion of the entire body.
- 172 (9) "Federal Firearms Licensee" means a person who:
- 173 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
- 174 (b) is engaged in the activities authorized by the specific category of license held.
- 175 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or
- 176 short barreled rifle, or a device that could be used as a dangerous weapon from which is
- 177 expelled a projectile by action of an explosive.
- 178 (b) As used in Sections [76-10-526](#) and [76-10-527](#), "firearm" does not include an
- 179 antique firearm.
- 180 (11) "Firearms transaction record form" means a form created by the bureau to be
- 181 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.
- 182 (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can

183 be readily restored to fire, automatically more than one shot without manual reloading by a  
184 single function of the trigger.

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

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

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

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

195 ~~[(15)]~~ (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

196 ~~[(16)]~~ (17) "Readily accessible for immediate use" means that a firearm or other  
197 dangerous weapon is carried on the person or within such close proximity and in such a manner  
198 that it can be retrieved and used as readily as if carried on the person.

199 ~~[(17)]~~ (18) "Residence" means an improvement to real property used or occupied as a  
200 primary or secondary residence.

201 ~~[(18)]~~ (19) "Securely encased" means not readily accessible for immediate use, such as  
202 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other  
203 storage area of a motor vehicle, not including a glove box or console box.

204 ~~[(19)]~~ (20) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a  
205 barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or  
206 barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun  
207 by alteration, modification, or otherwise, if the weapon as modified has an overall length of  
208 fewer than 26 inches.

209 ~~[(20)]~~ (21) "Shotgun" means a smooth bore firearm designed to fire cartridges  
210 containing pellets or a single slug.

211 ~~[(21)]~~ (22) "Shoulder arm" means a firearm that is designed to be fired while braced  
212 against the shoulder.

213 ~~[(22)]~~ (23) "Slug" means a single projectile discharged from a shotgun shell.

214 [~~(23)~~] (24) "State agency" or "entity" means a department, commission, board, council,  
215 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,  
216 library, unit, bureau, panel, or other administrative unit of the state, including the Board of  
217 Regents, each institution of higher education, and the institutional councils of each higher  
218 education institution.

219 [~~(24)~~] (25) "Violent felony" means the same as that term is defined in Section  
220 [76-3-203.5](#).

221 Section 4. Section **78B-6-2201** is enacted to read:

222 **Part 22. Firearm Preemption Enforcement Act**

223 **78B-6-2201. Firearm Preemption Enforcement Act.**

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

225 Section 5. Section **78B-6-2202** is enacted to read:

226 **78B-6-2202. Definitions.**

227 As used in this part:

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

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

232 (3) "Firearm accessory" means an item that is used in conjunction with or mounted  
233 upon a firearm, firearm action, or firearm receiver, but is not essential to the basic function of a  
234 firearm, including:

235 (a) a telescopic or laser sight;

236 (b) a magazine;

237 (c) a flash or sound suppressor;

238 (d) a folding or aftermarket stock or grip;

239 (e) a speed-loader;

240 (f) an ammunition carrier; and

241 (g) a light for target illumination.

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

244 (5) "Local authority" means a county, city, town, metro township, local district, local



245 education agency, public school, special service district under Title 17D, Chapter 1, Special  
246 Service District Act, an entity created by interlocal cooperation agreement under Title 11,  
247 Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute  
248 as a political subdivision of the state.

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

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

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

252 **78B-6-2203. Violation of legislative preemption -- Exceptions.**

253 (1) A local authority or state agency that violates legislative preemption by enacting or  
254 causing to be enforced an ordinance, regulation, measure, directive, rule, enactment, order, or  
255 policy that impinges upon the legislative preemption is liable as provided in this part.

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

258 (3) This part does not prohibit:

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

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

265 (c) a rule of a correctional or mental health facility under Section [76-8-311.3](#).

266 Section 7. Section **78B-6-2204** is enacted to read:

267 **78B-6-2204. Civil action -- Injunction -- Fines -- Penalties -- Immunity.**

268 (1) If a local authority or state agency makes or causes to be enforced an ordinance,  
269 regulation, measure, directive, rule, enactment, order, or policy in violation of this part, an  
270 individual who is harmed, or an organization, described in Subsection (6), with a member who  
271 is harmed by that action, may file suit against the local authority or state agency in any court of  
272 this state having jurisdiction over the local authority or state agency.

273 (2) If the court determines that a local authority or state agency violated this part, the  
274 court shall:

275 (a) order that the relevant ordinance, regulation, measure, directive, rule, enactment,

276 order, or policy is void;

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

280 (c) award to the plaintiff an amount equal to treble:

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

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

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

285 (d) assess a fine of up to \$500 against the local authority or state agency for each day  
286 the local authority or state agency is found to have knowingly and willfully violated this part.

287 (3) (a) Amounts awarded under Subsection (2) are due 30 days from the day on which  
288 the court awards the damages.

289 (b) Fines assessed under Subsection (2)(d) shall be deposited into the General Fund.

290 (4) A local authority or state agency may not claim as a defense that in enacting the  
291 ordinance, regulation, measure, directive, rule, enactment, order, or policy that the local  
292 authority or administrative agency is acting in good faith or upon advice of legal counsel.

293 (5) (a) Except when required by applicable law, public money may not be used to  
294 defend or reimburse the unlawful conduct of an individual found to have knowingly and  
295 willfully violated this part.

296 (b) To the extent permitted by the Utah Constitution, a knowing and willful violation  
297 of this part by an individual acting in an official capacity for a local authority or state agency  
298 enacting or causing to be enforced an ordinance, regulation, measure, directive, rule,  
299 enactment, order, policy, or otherwise under color of law is cause for termination of  
300 employment or contract, or removal from office in accordance with the applicable procedure  
301 for termination of employment or contract, or removal from office.

302 (6) An organization registered under the laws of any state with a purpose to preserve  
303 the right to keep and bear arms has standing to sue or join in any lawsuit described in this  
304 section.

305 (7) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, a state  
306 agency, local authority, or individual acting in an official capacity for a state agency or local

307 authority that violates this part is not immune from suit or liability for the violation and not  
308 subject to the requirements of Title 63G, Chapter 7, Governmental Immunity Act of Utah.