

FIREARM PREEMPTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill addresses the Legislature's preemption of the field of firearm regulation for the state.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies preemption of the field of firearms regulation;
- ▶ creates the Firearms Preemption Enforcement Act;
- ▶ outlines exceptions and violations of legislative firearm preemption;
- ▶ provides for civil action and remedies for a violation of legislative firearm 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

63G-7-301, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

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

30 ENACTS:

31 [53-5a-103.5](#), Utah Code Annotated 1953

32 [78B-6-2301](#), Utah Code Annotated 1953

33 [78B-6-2302](#), Utah Code Annotated 1953

34 [78B-6-2303](#), Utah Code Annotated 1953

35

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) As used in this section:

40 (a) "Ammunition" means the same as that term is defined in Section [53-5d-102](#).

41 (b) "Dangerous weapon" means the same as that term is defined in Section [76-10-501](#).

42 (c) "Firearm" means:

43 (i) a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled rifle, or a

44 device that could be used as a dangerous weapon from which is expelled a projectile by action

45 of an explosive;

46 (ii) ammunition; and

47 (iii) a firearm accessory.

48 (d) "Firearm accessory" means the same as that term is defined in Section [53-5b-103](#).

49 (e) "Local or state governmental entity" means the same as that term is defined in

50 Section [78B-6-2301](#).

51 (f) "Short barreled shotgun" or "short barreled rifle" means the same as that term is

52 defined in Section [76-10-501](#).

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

54 [(+)] (2) The individual right to keep and bear arms being a constitutionally protected

55 right under Article I, Section 6 of the Utah Constitution and the Second Amendment to the

56 United States Constitution, the Legislature finds the need to provide uniform civil and criminal

57 firearm laws throughout the state and declares that the Legislature occupies the whole field of

58 state regulation of firearms.

59 ~~[(2)]~~ (3) Except as specifically provided by state law, a local ~~[authority]~~ or state
60 governmental entity may not:

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

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

67 ~~[(3)]~~ (4) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is
68 uniformly applicable throughout this state and in all ~~[its]~~ the state's political subdivisions ~~[and~~
69 municipalities].

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

73 ~~[(5)]~~ (6) Unless specifically authorized by the Legislature by statute, a local ~~[authority~~
74 ~~or state entity]~~ or state governmental entity may not enact, establish, or enforce any ordinance,
75 regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the
76 possession, ownership, purchase, sale, transfer, transport, or use of firearms on either public or
77 private property.

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

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

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

82 ~~[(7) Nothing in this section restricts or expands]~~

83 (7) This section does not restrict or expand private property rights.

84 (8) A violation of this section is subject to Title 78B, Chapter 6, Part 23, Firearm
85 Preemption Enforcement Act.

86 Section 2. Section **53-5a-103.5** is enacted to read:

87 **53-5a-103.5. Firearm regulation in homeless shelters.**

88 (1) As used in this section:

89 (a) (i) "Homeless shelter" means a permanent or temporary facility operated or owned
90 by a local or state governmental entity that provides temporary shelter to homeless individuals
91 and has the capacity to provide temporary shelter to at least 10 individuals per night.

92 (ii) "Homeless shelter" does not include a permanent or temporary facility operated by
93 a local or state governmental entity that provides temporary shelter to individuals displaced due
94 to a disaster or under a state of emergency.

95 (b) "Local or state governmental entity" means the same as that term is defined in
96 Section [78B-6-2301](#).

97 (2) (a) Except as provided in Subsection (2)(b) and subject to Subsection (3), a local or
98 state governmental entity may prohibit the possession of a firearm within a homeless shelter
99 over which the local or state government entity exercises authority.

100 (b) A local or state governmental entity may not prohibit the possession of a firearm on
101 the grounds outside of a homeless shelter.

102 (3) If a local or state governmental entity prohibits the possession of a firearm under
103 Subsection (2), the local or state governmental entity shall:

104 (a) display readily visible signage at all public entrances of the homeless shelter
105 indicating that firearms are not permitted inside the homeless shelter;

106 (b) (i) provide a means of detecting a firearm at all public entrances to the homeless
107 shelter; and

108 (ii) ensure an individual is physically present at a public entrance to the homeless
109 shelter when the public entrance to the homeless shelter is in use;

110 (c) provide secure storage for a firearm while an individual is inside the homeless
111 shelter; and

112 (d) prohibit the collection of information about a firearm that is stored at the homeless
113 shelter, including taking a photograph of the firearm or recording the serial number of the

114 firearm.

115 (4) A stored firearm in a homeless shelter that is abandoned for more than seven days
116 by the owner of the firearm may be relinquished by the homeless shelter to a law enforcement
117 agency for disposal.

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

119 **63G-7-301. Waivers of immunity.**

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

122 (b) Actions arising out of contractual rights or obligations are not subject to the
123 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

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

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

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

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

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

139 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of
140 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
141 governmental entity when the governmental entity has taken or damaged private property for

142 public uses without just compensation;

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

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

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

150 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

151 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
152 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

153 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
154 or other public improvement;

155 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
156 proximately caused by a negligent act or omission of an employee committed within the scope
157 of employment; [~~and~~]

158 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
159 a sexual battery, as provided in Section 76-9-702.1, committed:

160 (i) against a student of a public elementary or secondary school, including a charter
161 school; and

162 (ii) by an employee of a public elementary or secondary school or charter school who:

163 (A) at the time of the sexual battery, held a position of special trust, as defined in
164 Section 76-5-404.1, with respect to the student;

165 (B) is criminally charged in connection with the sexual battery; and

166 (C) the public elementary or secondary school or charter school knew or in the exercise
167 of reasonable care should have known, at the time of the employee's hiring, to be a sex
168 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
169 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a

170 background check under Section [53G-11-402](#)[.]; and

171 (k) as to any action brought under Section [78B-6-2303](#).

172 (3) (a) As used in this Subsection (3):

173 (i) "Code of conduct" means a code of conduct that:

174 (A) is not less stringent than a model code of conduct, created by the State Board of
175 Education, establishing a professional standard of care for preventing the conduct described in
176 Subsection (3)(a)(i)(D);

177 (B) is adopted by the applicable local education governing body;

178 (C) regulates behavior of a school employee toward a student; and

179 (D) includes a prohibition against any sexual conduct between an employee and a
180 student and against the employee and student sharing any sexually explicit or lewd
181 communication, image, or photograph.

182 (ii) "Local education agency" means:

183 (A) a school district;

184 (B) a charter school; or

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

186 (iii) "Local education governing board" means:

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

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

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

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

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

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

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

198 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
199 code of conduct; and

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

201 (A) provided training on the code of conduct to the employee; and

202 (B) required the employee to sign a statement acknowledging that the employee has
203 read and understands the code of conduct.

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

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

207 (ii) "Policy governing behavior" means a policy adopted by a higher education
208 institution or the Utah Board of Higher Education that:

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

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

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

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

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

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

220 (v) "Subordinate student" means a student:

221 (A) of a higher education institution; and

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

224 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
225 claim for an injury resulting from a sexual battery committed against a subordinate student by a

226 special trust employee, unless:

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

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

231 (B) with the student's consent; or

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

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

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

237 **76-10-500. Uniform law.**

238 (1) As used in this section:

239 (a) "Directive" means the same as that term is defined in Section [78B-6-2301](#).

240 (b) "Firearm" means the same as that term is defined in Section [53-5a-102](#).

241 (c) "Local or state governmental entity" means the same as that term is defined in
242 Section [78B-6-2301](#).

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

248 (3) Except as specifically provided by state law, [~~a citizen of the United States or a~~
249 lawfully admitted alien shall not be] a local or state governmental entity may not:

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

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

256 ~~[(2)]~~ (4) This part is uniformly applicable throughout this state and in all ~~[its]~~ the state's
257 political subdivisions ~~[and municipalities. All authority]~~.

258 (5) Authority to regulate firearms ~~[shall be]~~ is reserved to the state except where the
259 Legislature specifically delegates responsibility to local ~~[authorities]~~ or state governmental
260 entities.

261 (6) Unless specifically authorized by the Legislature by statute, a local ~~[authority]~~ or
262 state governmental entity may not enact or enforce ~~[any ordinance, regulation, or rule]~~ a
263 directive pertaining to firearms that in any way inhibits or restricts the possession, ownership,
264 purchase, sale, transfer, transport, or use of firearms on either public or private property.

265 (7) This part does not restrict or expand private property rights.

266 (8) A violation of this section is subject to Title 78B, Chapter 6, Part 23, Firearm
267 Preemption Enforcement Act.

268 Section 5. Section **78B-6-2301** is enacted to read:

269 **Part 23. Firearm Preemption Enforcement Act.**

270 **78B-6-2301. Definitions.**

271 As used in this part:

272 (1) "Directive" means an ordinance, regulation, measure, rule, enactment, order, or
273 policy issued, enacted, or required by a local or state governmental entity.

274 (2) "Firearm" means the same as that term is defined in Section [53-5a-102](#).

275 (3) "Legislative firearm preemption" means the preemption provided for in Sections
276 [53-5a-102](#) and [76-10-500](#).

277 (4) "Local or state governmental entity" means:

278 (a) a department, commission, board, council, agency, institution, officer, corporation,
279 fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other
280 administrative unit of the state, including the Utah Board of Higher Education, each institution
281 of higher education, and the boards of trustees of each higher education institution; or

282 (b) a county, city, town, metro township, local district, local education agency, public
283 school, school district, charter school, special service district under Title 17D, Chapter 1,
284 Special Service District Act, an entity created by interlocal cooperation agreement under Title
285 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in
286 statute as a political subdivision of the state.

287 Section 6. Section **78B-6-2302** is enacted to read:

288 **78B-6-2302. Violation of legislative preemption -- Exceptions.**

289 (1) A local or state governmental entity may not enact or enforce a directive that
290 violates legislative firearm preemption.

291 (2) This part does not prohibit the enactment or enforcement of a directive:

292 (a) by a law enforcement agency if the directive pertains to a firearm issued to or used
293 by a peace officer in the course of the peace officer's official duties;

294 (b) by a correctional facility or mental health facility under Section [76-8-311.3](#);

295 (c) of judicial administration if the directive establishes a secure courthouse;

296 (d) by the State Tax Commission if the directive establishes a secure area within a
297 State Tax Commission facility; or

298 (e) by a local or state governmental entity if the directive is developed in response to
299 and in accordance with legislative authority.

300 Section 7. Section **78B-6-2303** is enacted to read:

301 **78B-6-2303. Civil action -- Injunction -- Damages -- Immunity.**

302 (1) A person who is harmed by a local or state governmental entity that makes or
303 causes to be enforced a directive in violation of legislative firearm preemption may submit a
304 written communication to the local or state governmental entity that harmed the person asking
305 the local or state governmental entity that harmed the person to rescind or repeal the directive.

306 (2) (a) If a local or state governmental entity fails to rescind or repeal a directive within
307 30 days after the day on which the local or state governmental entity receives a request
308 described in Subsection (1), the person who submitted the request may file suit against the
309 local or state governmental entity that failed to rescind or repeal the directive.

310 (b) The suit described in Subsection (2)(a) may be filed in any court of this state having
311 jurisdiction over the local or state governmental entity that failed to rescind or repeal the
312 directive in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah.

313 (3) If the court determines that the local or state governmental entity that failed to
314 rescind or repeal the directive violated legislative firearm preemption, the court shall:

315 (a) order that the relevant directive is void;

316 (b) prohibit the local or state governmental entity that failed to rescind or repeal the
317 void directive from enforcing the void directive; and

318 (c) award to the prevailing party:

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

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

322 (iii) interest on the sums awarded under this Subsection (3) accrued at the legal rate
323 from the date on which the suit is filed.