

SB0115S02 compared with SB0115S01

~~{deleted text}~~ shows text that was in SB0115S01 but was deleted in SB0115S02.

inserted text shows text that was not in SB0115S01 but was inserted into SB0115S02.

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~~{Senator Chris H. Wilson}~~ Representative A. Cory Maloy proposes the following substitute bill:

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;

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- ▶ 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

ENACTS:

53-5a-103.5, Utah Code Annotated 1953

78B-6-2301, Utah Code Annotated 1953

78B-6-2302, Utah Code Annotated 1953

78B-6-2303, Utah Code Annotated 1953

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

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

53-5a-102. Uniform firearm laws.

(1) As used in this section:

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

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

(c) "Firearm" means:

(i) 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;

(ii) ammunition; and

(iii) a firearm accessory.

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

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

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Section 78B-6-2301.

(f) "Short barreled shotgun" or "short barreled rifle" means the same as that term is defined in Section 76-10-501.

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

~~{ (h) "Venue contractor" means the same as that term is defined in Section 78B-6-2301.~~

~~{~~ [(+) (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.

[(2)] (3) Except as specifically provided by state law, a local [authority] or state governmental 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.

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

[(5)] (6) Unless specifically authorized by the Legislature by statute, a local [authority or state entity] or state governmental entity ~~{ or a venue contractor }~~ may not enact, establish, or enforce any ordinance, regulation, rule, ~~{ contractual requirement }~~ or policy pertaining to firearms that in any way inhibits or restricts the possession, ownership, purchase, sale, transfer, transport, 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]~~

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~~[(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]~~

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

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

Section 2. Section ~~{63G-7-301 is amended to read:~~

~~}{53-5a-103.5 is enacted to read:~~

~~53-5a-103.5. Firearm regulation in homeless shelters.~~

~~(1) As used in this section:~~

~~(a) (i) "Homeless shelter" means a permanent or temporary facility operated by a local or state governmental entity that provides temporary shelter to homeless individuals and has the capacity to provide temporary shelter to at least 20 individuals per night.~~

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

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

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

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

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

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

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

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

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

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

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

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

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 Section 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

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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;

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

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

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

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

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

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

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

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

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

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402[-]; and

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

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

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

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

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

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

(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 a code of conduct; and

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

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

(B) required the employee to sign a statement acknowledging that the employee has

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read and understands the code of conduct.

(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 Utah Board of Higher Education 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

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

Section ~~3~~4. Section **76-10-500** is amended to read:

76-10-500. Uniform law.

(1) As used in this section:

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

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

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

~~(1)~~ (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 laws throughout the state and declares that the Legislature occupies the whole field of state regulation of firearms.

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

(a) ~~[prohibited]~~ prohibit an individual from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at ~~[his]~~ 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.

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

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

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

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

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

Section ~~{4}~~5. Section **78B-6-2301** is enacted to read:

Part 23. Firearm Preemption Enforcement Act.

78B-6-2301. Definitions.

As used in this part:

(1) "Directive" means an ordinance, regulation, measure, rule, enactment, order, ~~{contractual requirement, }~~ or policy issued, enacted, or required by a local or state governmental entity ~~{ or a venue contractor }.~~

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

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

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

(a) 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 Utah Board of Higher Education, each institution of higher education, and the boards of trustees of each higher education institution; or

(b) a county, city, town, metro township, local district, local education agency, public school, school district, charter 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.

~~{~~ (5) "Venue contractor" means a person who contracts with a local or state governmental entity to manage or operate a venue or facility owned by a local or state governmental entity.

~~}~~ Section ~~{5}~~6. Section **78B-6-2302** is enacted to read:

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

(1) A local or state governmental entity ~~{ or a venue contractor }~~ may not enact or enforce a directive that violates legislative firearm preemption.

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

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

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

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

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

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

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

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

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

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

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

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

(a) order that the relevant directive is void;

(b) prohibit the local or state governmental entity ~~for the venue contractor~~ that failed to rescind or repeal the void directive from enforcing the void directive; and

(c) award to the prevailing party;

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(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 under this Subsection (3) accrued at the legal rate from the date on which the suit is filed.