

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE DRH20275-LH-161 (04/01)

Short Title: Second Amendment Preservation Act. (Public)

Sponsors: Representative Setzer.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE RIGHT TO KEEP AND BEAR ARMS WITHIN THE STATE
3 OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** This Act shall be known as the Second Amendment Preservation
6 Act.

7 **SECTION 2.** The General Assembly finds and declares the following:

- 8 (1) The General Assembly is firmly resolved to support and defend the United
9 States Constitution against every aggression, either foreign or domestic, and
10 oppose every infraction of the principles that constitute the basis of the union
11 of the states because only a faithful observance of those principles can
12 secure the nation's existence and the public's happiness.
- 13 (2) Acting through the United States Constitution, the people of the several
14 states created the federal government to be the people's agent in the exercise
15 of a few defined powers, while reserving to the state governments the power
16 to legislate on matters that concern the lives, liberties, and properties of
17 citizens in the ordinary course of affairs.
- 18 (3) The limitation of the federal government's power is affirmed under the Tenth
19 Amendment to the United States Constitution, which defines the total scope
20 of federal power as being that which has been delegated by the people to the
21 federal government, and all power not delegated to the federal government
22 in the United States Constitution is reserved to the states or to the people.
- 23 (4) If the federal government assumes powers that the people did not grant to
24 the federal government in the United States Constitution, the federal
25 government's acts are unauthoritative, void, and of no force.
- 26 (5) The several states respect the proper role of the federal government, but
27 reject the proposition that such respect requires unlimited submission. If the
28 federal government, created by compact among the states, was the exclusive
29 or final judge of the extent of the powers granted to the federal government
30 by the states through the constitution, the federal government's discretion,
31 and not the constitution, would necessarily become the measure of those
32 powers. To the contrary, as in all other cases of compacts among powers
33 having no common judge, each party has an equal right to judge whether
34 infractions of the compact have occurred, as well as to determine the mode
35 and measure of redress. Although the states have granted supremacy to laws
36 and treaties made pursuant to the powers granted in the constitution, that



1 supremacy does not extend to various federal statutes, executive orders,
2 administrative orders, court orders, rules, regulations, and other actions that
3 restrict or prohibit the manufacture, ownership, and use of firearms, firearm
4 accessories, or firearm ammunition exclusively within the borders of North
5 Carolina. Such federal actions exceed the powers granted to the federal
6 government except to the extent that they are necessary and proper for
7 governing the United States Armed Forces or militia forces actively
8 employed in the service of the Armed Forces.

9 (6) The people of the several states have, in Article I, Section 8, of the United
10 States Constitution, given Congress the power "to regulate Commerce with
11 foreign Nations, and among the several States," but "regulating commerce"
12 does not include the power to limit citizens' right to keep and bear arms in
13 defense of the citizens' families, neighbors, persons, or property, or to dictate
14 as to what type of arms and accessories law-abiding, mentally competent
15 North Carolinians may buy, sell, exchange, or otherwise possess within the
16 borders of this State.

17 (7) The people of the several states have, in Article I, Section 8, of the United
18 States Constitution, also granted Congress the power to "lay and collect
19 taxes, duties, imposts and excises, to pay the debts and provide for the
20 common Defence and general Welfare of the United States" and to "make all
21 laws which shall be necessary and proper for carrying into execution the ...
22 powers vested by [the] constitution in the government of the United States,
23 or in any department or officer thereof." These constitutional provisions
24 merely identify the means by which the federal government may execute the
25 federal government's limited powers and ought not to be construed to grant
26 unlimited powers because to do so would destroy the carefully constructed
27 equilibrium between the federal and state governments. Consequently, the
28 General Assembly rejects any claim that the taxing and spending powers of
29 Congress can be used to diminish in any way the right of the people to keep
30 and bear arms.

31 (8) The people of North Carolina have vested the General Assembly with the
32 authority to regulate the manufacture, possession, exchange, and use of
33 firearms within the borders of this State, subject only to the limits imposed
34 by the Second Amendment to the United States Constitution and Section 30
35 of Article I of the North Carolina Constitution.

36 (9) The General Assembly strongly encourages responsible gun ownership,
37 including parental supervision of minors in the proper use, storage, and
38 ownership of all firearms, the prompt reporting of stolen firearms, and the
39 proper enforcement of all State gun laws. The General Assembly condemns
40 any unlawful transfer of firearms and the use of any firearm in any unlawful
41 activity.

42 **SECTION 3.** Chapter 1 of the General Statutes is amended by adding a new
43 Article to read as follows:

44 "Article 53.

45 "Protection of Right to Keep and Bear Arms.

46 **"§ 1-640. Definitions.**

47 The following definitions apply in this article:

- 48 (1) Government agency. – North Carolina or a municipality or other political
49 subdivision of this State; and any agency of this State or a municipality or
50 other political subdivision of this State, including a department, bureau,

1 board, commission, office, agency, council, or public institution of higher
2 education.

3 (2) Law-abiding citizen. – An individual who is legally present in this State, and
4 may, under the laws of this State, possess a firearm.

5 (3) Right to keep and bear arms. – The right guaranteed by the Second
6 Amendment to the United States Constitution and Section 30 of Article I of
7 the North Carolina Constitution.

8 **"§ 1-641. Certain federal law regulating firearms invalid.**

9 A federal law, including a statute, an executive, administrative, or court order, or a rule, that
10 infringes on a law-abiding citizen's right to keep and bear arms under the Second Amendment
11 to the United States Constitution or Section 30 of Article I of the North Carolina Constitution,
12 is invalid and not enforceable in this State. A federal law that infringes on a law-abiding
13 citizen's right to keep and bear arms includes a law that does any of the following:

14 (1) Imposes a tax, fee, or stamp on a firearm, firearm accessory, or firearm
15 ammunition that is not common to all other goods and services and may be
16 reasonably expected to create a chilling effect on the purchase or ownership
17 of those items by a law-abiding citizen.

18 (2) Requires the registration or tracking of a firearm, firearm accessory, or
19 firearm ammunition or the owners of those items that may be reasonably
20 expected to create a chilling effect on the purchase or ownership of those
21 items by a law-abiding citizen.

22 (3) Prohibits the possession, ownership, use, or transfer of a firearm, firearm
23 accessory, or firearm ammunition by a law-abiding citizen.

24 (4) Orders the confiscation of a firearm, firearm accessory, or firearm
25 ammunition from a law-abiding citizen.

26 **"§ 1-642. Duties of courts and law enforcement agencies; enforcement by government**
27 **employees, officials, and agencies prohibited.**

28 (a) Each State court and law enforcement agency of this State shall protect a
29 law-abiding citizen's right to keep and bear arms.

30 (b) A government agency or an employee or an official of a government agency may
31 not enforce a federal law described by G.S. 1-641.

32 **"§ 1-643. Remedies.**

33 (a) A person who knowingly violates G.S. 1-642(b) is liable under this section to a
34 law-abiding citizen whose right to keep and bear arms was infringed by the person.

35 (b) A law-abiding citizen described by subsection (a) of this section may obtain any of
36 the following remedies:

37 (1) Declaratory relief under Article 26 of Chapter 1 of the General Statutes.

38 (2) Injunctive relief to prevent the threatened violation or continued violation.

39 (3) Compensatory damages for pecuniary and nonpecuniary losses.

40 (4) Reasonable attorneys' fees, court costs, and other reasonable expenses
41 required in bringing the action.

42 **"§ 1-644. Notice; right to accommodate.**

43 (a) A claimant may not bring an action to assert a claim under this article unless, 60
44 days before bringing the action, the claimant gives to the person who violated G.S. 1-642(b), by
45 certified mail, return receipt requested, written notice (i) that the person has taken or proposes
46 to take an enforcement action infringing on the claimant's right to keep and bear arms and (ii)
47 of the particular enforcement action giving rise to the infringement.

48 (b) Notwithstanding subsection (a) of this section, a claimant may, within the 60-day
49 period established by subsection (a) of this section, bring an action for declaratory or injunctive
50 relief and associated attorneys' fees, court costs, and other reasonable expenses, if all of the
51 following criteria are satisfied:

1 (1) Infringement on the claimant's right to keep and bear arms is imminent.

2 (2) The claimant was not informed and did not otherwise have knowledge of the
3 enforcement action in time to reasonably provide the notice.

4 (c) A person who receives a notice under subsection (a) of this section may cure the
5 infringement on the claimant's right to keep and bear arms.

6 (d) A claimant with respect to whom an infringement on the claimant's right to keep and
7 bear arms has been cured may not bring an action under G.S. 1-643.

8 **"§ 1-645. One-year limitations period.**

9 (a) A claimant must bring an action to assert a claim for damages under this Article not
10 later than one year after the date the claimant knew or should have known of the infringement
11 on the claimant's right to keep and bear arms.

12 (b) Mailing notice under G.S. 1-644 tolls the limitations period established under this
13 section until the 75th day after the date on which the notice was mailed.

14 **"§ 1-646. Sovereign and governmental immunity waived; no official immunity.**

15 (a) Sovereign and governmental immunity to suit and from liability is waived and
16 abolished to the extent of liability created by G.S. 1-643, and a claimant may sue a government
17 agency for damages allowed by that section.

18 (b) The affirmative defense of official immunity is not available to an employee or
19 official sued under G.S. 1-643.

20 (c) Notwithstanding subsection (a) of this section, this Article does not waive or abolish
21 sovereign immunity to suit and from liability under the Eleventh Amendment to the United
22 States Constitution."

23 **SECTION 4.** This act applies only to an infringement on the right to keep and bear
24 arms that occurs on or after the effective date of this act.

25 **SECTION 5.** This act becomes effective October 1, 2015.