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H.B. 62
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Loychik and Grendell

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SUMMARY

- Enacts the Ohio Second Amendment Safe Haven Act.
- Specifies certain federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations must be considered infringements on the people's right to keep and bear arms.
- Specifies an infringement is invalid in Ohio, must not be recognized by Ohio, must be specifically rejected by Ohio, and must be considered null, void, and of no effect in Ohio.
- Specifies it is the duty of the courts and law enforcement agencies of Ohio to protect the rights of law-abiding citizens to keep and bear arms within Ohio's borders and to protect these rights from infringements.
- Prohibits any person from having the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, court orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms.
- Specifies any entity or person who knowingly violates the bill's provisions, or who otherwise knowingly deprives an Ohio citizen of the right to keep and bear arms, while acting under the color of any state or federal law, is liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress.
- Prohibits any federal official, agent, employee, or deputy who knowingly enforces, attempts to enforce, or supports others in an attempt to enforce any infringement is permanently ineligible to serve as a law enforcement officer or a supervisor of law enforcement officers for the state or any political subdivision of Ohio.
- Gives standing to any person who believes a law enforcement officer or supervisor is ineligible to serve in such capacity to pursue an action for declaratory judgment.

- If a court determines a law enforcement officer or supervisor is ineligible, requires their employer to terminate them and requires their employer to pay the attorney's fees and court costs of the person who brought the action for declaratory judgment.

DETAILED ANALYSIS

Role of the federal government and the Ohio General Assembly

The bill states the following:

The General Assembly of the state of Ohio is firmly resolved to support and defend the Constitution of the United States against every aggression, whether foreign or domestic, and is duty-bound to oppose every infraction of those principles that constitute the basis of the union of the states because only a faithful observance of those principles can secure the union's existence and the public happiness.

Acting through the Constitution of the United States, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving for the state governments the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs.

The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal powers as being that which has been delegated by the people of the several states to the federal government, and all powers not delegated to the federal government in the Constitution of the United States is reserved to the states respectively or the people themselves.

If the federal government assumes powers that the people did not grant it in the Constitution of the United States, its acts are unauthoritative, void, and of no force.

The several states of the United States respect the proper role of the federal government but reject the proposition that such respect requires unlimited submission.

If the federal government, created by a compact among the states, was the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution of the United States, the federal government's discretion, and not the Constitution of the United States, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party

has an equal right to judge for itself as to whether infractions of the compact have occurred, as well as to determine the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made under the powers granted in the Constitution of the United States, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions that collect data or restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Ohio; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating the United States armed forces or for organizing, arming, and disciplining militia forces actively employed in the service of the United States armed forces.

The people of the several states have given Congress the power “to regulate commerce with foreign nations, and among the several states,” but “regulating commerce” does not include the power to limit citizens’ right to keep and bear arms in defense of their families, neighbors, persons, or property, or to dictate what sort of arms and accessories law-abiding Ohioans may buy, sell, exchange, or otherwise possess within the borders of this state.

The people of the several states also have granted Congress the power “to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States” and “to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution of the United States in the government of the United States, or in any department or office thereof.” These constitutional provisions merely identify the means by which the federal government may execute its limited powers and shall not be construed to grant unlimited power because to do so would be to destroy the carefully constructed equilibrium between the federal and state governments. Consequently, the General Assembly rejects any claim that the taxing and spending powers of Congress may be used to diminish in any way the right of the people to keep and bear arms.

The people of this state have vested the General Assembly with the authority to regulate the manufacture, possession, exchange, and use of firearms within the borders of this state,

subject only to the limits imposed by the Second Amendment to the United States Constitution and the Constitution of Ohio.

The General Assembly of the State of Ohio strongly promotes responsible gun ownership, including parental supervision of minors in the proper use, storage, and ownership of all firearms; the prompt reporting of stolen firearms; and the proper enforcement of all state gun laws. The General Assembly condemns any unlawful transfer of firearms and the use of any firearm in any criminal or unlawful activity.¹

Infringements

The bill specifies that the following federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations must be considered infringements on the people's right to keep and bear arms guaranteed by the Second Amendment to the U.S. Constitution and Section 4 of Article I, Ohio Constitution within Ohio's borders:

- Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens;
- Any registering or tracking of firearms, firearm accessories, or ammunition that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens;
- Any registering or tracking of the owners of firearms, firearm accessories, or ammunition that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens;
- Any act forbidding the possession, ownership, or use or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens;
- Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

The bill specifies that all federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations, whether enacted before or after the enactment of the bill's provisions, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the U.S. Constitution and Section 4 of Article I, Ohio Constitution are invalid in Ohio, must not be recognized by Ohio, must be specifically rejected by Ohio, and must be considered null, void, and of no effect in Ohio.

¹ R.C. 2923.50(B).

The bill makes it the duty of the courts and law enforcement agencies of Ohio to protect the rights of law-abiding citizens to keep and bear arms within Ohio's borders and to protect these rights from the infringements set forth under the bill, listed above.

The bill prohibits any person, including any public officer or employee of Ohio or any political subdivision of Ohio, from having the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, court orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms, as set forth under the bill, listed above.

The bill notwithstanding the Revised Code in order to make any entity or person who knowingly violates the provisions of the bill, or otherwise knowingly deprives an Ohio citizen of the rights or privileges ensured by the Second Amendment to the U.S. Constitution or Section 4 of Article I, Ohio Constitution, while acting under the color of any state or federal law, liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress. Under the bill, the court may award the prevailing party, other than the State of Ohio or any political subdivision of Ohio, reasonable attorney's fees and costs. Finally, the bill specifies that sovereign, official, or qualified immunity is not an affirmative defense in these actions.²

Law enforcement officers

The bill specifies that any person acting as an official, agent, employee, or deputy of the U.S. government, or otherwise acting under the color of federal law within the borders of Ohio, who knowingly does either of the following, is permanently ineligible to serve as a law enforcement officer or to supervise law enforcement officers for Ohio or any political subdivision of Ohio:

- Enforces or attempts to enforce any of the infringements set forth in the bill, listed above;
- Gives material aid and support to the efforts of others who enforce or attempt to enforce any of the infringements set forth in the bill, listed above.

The state and all political subdivisions are prohibited from employing as a law enforcement officer or supervisor of law enforcement officers any person who is ineligible under this provision.

The bill gives standing to any person residing or conducting business in a jurisdiction who believes that a law enforcement officer or supervisor of law enforcement officers of that jurisdiction has taken action that would render that officer or supervisor ineligible under the bill to serve in such capacity to pursue an action for declaratory judgment in the court of common pleas of the county in which the action allegedly occurred, or in the court of common pleas of Franklin County, with respect to the employment eligibility of the law enforcement officer or the supervisor of law enforcement officers.

² R.C. 2923.50(C), (D), (E), (F), and (G).

If a court determines that a law enforcement officer or supervisor of law enforcement officers has taken any action that would render the officer or supervisor ineligible to serve in that capacity under the bill, then:

- The law enforcement officer or supervisor of law enforcement officers must immediately be terminated from the officer's or supervisor's position.
- The jurisdiction that had employed the ineligible law enforcement officer or supervisor of law enforcement officers must be required to pay the court costs and attorney's fees associated with the declaratory judgment action that resulted in the finding of ineligibility.

Under the bill, nothing precludes a person's right of appeal or remediation otherwise provided under Ohio law.³

Definitions

For purposes of the bill:⁴

"Law-abiding citizen" means a person who is not otherwise precluded under state law from possessing a firearm and must not be construed to include anyone who is not legally present in the U.S. or Ohio.

"Law enforcement officer" means an individual who is employed, commissioned, disposed, appointed, or elected in one of the following capacities for Ohio, a political subdivision of Ohio, or an agency, department, or instrumentality of Ohio or a political subdivision of Ohio:

- A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority, or state highway patrol trooper;
- An officer, agent, or employee of Ohio or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;
- A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;
- A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

³ R.C. 2923.50(H).

⁴ R.C. 2923.50(A).

- A person lawfully called pursuant to the Sheriff's Law to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;
- A person appointed by a mayor pursuant to Municipal Public Safety Law as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;
- A member of the Ohio organized militia or the U.S. armed forces, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
- A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;
- A veterans' home police officer;
- A member of a police force employed by a regional transit authority;
- A special police officer employed by a port authority;
- The House of Representatives Sergeant-at-arms if the House of Representatives Sergeant-at-arms has arrest authority law and an assistant House of Representatives Sergeant at arms;
- The Senate Sergeant-at-arms and an assistant Senate Sergeant-at-arms;
- A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the U.S. Department of Transportation;
- A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract;
- A state university law enforcement officer;
- An enforcement agent of the Department of Public Safety;
- An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
- An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer;
- A forest-fire investigator appointed by the Chief of the Division of Forestry;
- A natural resources officer appointed by the Director of Natural Resources;
- A wildlife officer designated by the Chief of the Division of Wildlife;
- An individual designated to perform law enforcement duties for townships park districts, park districts, or conservancy districts;

- An officer or employee of the Bureau of Criminal Identification and Investigation who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer;
- A state fire marshal law enforcement officer;
- Any person who is employed in Ohio, who is authorized to carry firearms, and who is subject to and in compliance with the requirements of the firearms requalification program.

"Political subdivision" means a county, township, municipal corporation, or any other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

"Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

"Public officer" includes all officers, employees, or duly authorized representatives or agents of a public office.

COMMENT

The Supremacy Clause of the U.S. Constitution specifies that the U.S. Constitution and federal laws generally take precedence over state laws.⁵ The provisions of the bill that nullify federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations; prohibit the enforcement of those federal matters within Ohio; and nullify any immunity that might exist under federal law, may be vulnerable to challenge under the Supremacy Clause.

The Kansas Second Amendment Protection Act (SAPA)⁶ was discussed in *United States v. Cox*.⁷ Shane Cox and Jeremy Kettler were prosecuted under the National Firearms Act for selling and purchasing unregistered firearms and unregistered silencers. They argued the Kansas SAPA shielded them from being prosecuted under federal law. The court did not agree. The court stated that, although "Cox and Kettler . . . have been prosecuted for conduct that, based on a state statute's assurances, they believed was lawful . . . allowing state legislatures to estop the federal government from prosecuting its laws would upset the balance of powers between states and the federal government and contravene the Supremacy Clause."⁸ The court did not

⁵ U.S. Constitution, Article IV, Paragraph 2.

⁶ Kansas Annotated Statutes § 50-1201 to § 50-1211.

⁷ 906 F.3d 1170 (Tenth Circuit, 2018).

⁸ *United States v. Cox*, at 1192.

address the constitutionality of Kansas' SAPA. The U.S. Supreme Court declined to review the case.⁹

HISTORY

Action	Date
Introduced	02-03-21

H0062-I-134/ts

⁹ *Cox v. United States*, 2019 U.S. LEXIS 3931 (U.S., June 10, 2019).