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S.B. 202
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Thomas and Craig

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SUMMARY

- Repeals the statute that preempts local authority over specified types of firearms-related conduct.

DETAILED ANALYSIS

Repeal of R.C. 9.68

The bill repeals both the current version of R.C. 9.68, which is in effect until December 28, 2019,¹ and the future version of that section, which takes effect on December 28, 2019.²

The Ohio Supreme Court has held that the current version of R.C. 9.68 is a general law that displaces municipal firearms ordinances and does not unconstitutionally infringe on municipal home rule authority.³ Repeal of the statute eliminates the basis of the Court's holding.

Current version of R.C. 9.68, effective until December 28, 2019

The version of R.C. 9.68 that currently is in effect, and that will be in effect until December 28, 2019, reads as follows:

(A) The individual right to keep and bear arms, being a fundamental individual right that predates the United States

¹ Section 1.

² Sections 2 and 3.

³ *City of Cleveland v. State* (2010), 128 Ohio St.3d 135; also see related: *Ohioans for Concealed Carry, Inc. v. City of Clyde* (2008), 120 Ohio St.3d 96; *Ohioans for Concealed Carry, Inc. v. City of Cleveland* (8th District, April 27, 2017), No. 104970, 2017 Ohio App. LEXIS 1591.

Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

(B) In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.

(C) As used in this section:

(1) The possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(D) This section does not apply to either of the following:

(1) A zoning ordinance that regulates or prohibits the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses;

(2) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same geographic area and does not result in a de facto prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for commercial, retail, or industrial uses.

Version of R.C. 9.68 that takes effect on December 28, 2019

The version of R.C. 9.68 that takes effect on December 28, 2019 (the future version), differs from the version of the section currently in effect (the current version) as follows:

1. The future version expands the current version's statement regarding the General Assembly's finding of the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition, to also include references to the manufacture, taxation, keeping, and reporting of loss or theft of firearms, their components, and their ammunition.
2. The future version adds a provision stating that, in addition to the current statements regarding the individual right to keep and bear arms being a fundamental individual right that predates the U.S. Constitution and Ohio Constitution, and being constitutionally protected in every part of Ohio, and the General Assembly's finding described above in (1), the General Assembly also finds and declares that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves or others.
3. The future version modifies the current version's provision specifying that, except as specifically provided by the U.S. Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition, to instead specify that, except as specifically provided by the U.S. Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, including by any ordinance, rule, regulation, resolution, practice, or other action or any threat of citation, prosecution, or other legal process, may own, possess, purchase, acquire, transport, store, carry, sell, transfer, manufacture, or keep any firearm, part of a firearm, its components, and its ammunition.
4. The future version adds a provision immediately after the provision described above in (3) stating that any such further license, permission, restriction, delay, or process interferes with the fundamental individual right described above in (2) and unduly inhibits law-abiding people from protecting themselves, their families, and others from intruders and attackers and from other legitimate uses of constitutionally protected firearms, including hunting and sporting activities, and the state by R.C. 9.68 preempts, supersedes, and declares null and void any such further license, permission, restriction, delay, or process.
5. The future version modifies the current version's provisions regarding challenges to an ordinance, rule, or regulation and recoveries based on such a challenge. The current version specifies that, in addition to any other relief provided, the court must award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with R.C. 9.68. The future version broadens the challenge provisions to specify that:
 - a. A person, group, or entity adversely affected by any manner of ordinance, rule, regulation, resolution, practice, or other action enacted or enforced by a political subdivision in conflict with the provisions described above in (1) to (4) may bring a

- civil action against the subdivision seeking damages from the subdivision, declaratory relief, injunctive relief, or a combination of those remedies.
- b. Any damages awarded must be awarded against, and paid by, the political subdivision.
 - c. In addition to any actual damages awarded against the political subdivision and other relief provided with respect to such an action, the court must award reasonable expenses to any person, group, or entity that brings the action, to be paid by the subdivision, if either of the following applies: (i) the person, group, or entity prevails in a challenge to the ordinance, rule, regulation, resolution, practice, or action as being in conflict with the provisions described above in (1) to (4), or (ii) the ordinance, rule, regulation, resolution, practice, or action or the manner of its enforcement is repealed or rescinded after the civil action was filed but prior to a final court determination of the action.
 - d. As used above in (5)(c), the future version specifies that “reasonable expenses” includes, but is not limited to, reasonable attorney’s fees, court costs, expert witness fees, and compensation for loss of income.

HISTORY

Action	Date
Introduced	09-19-19
