



Ohio Legislative Service Commission

Bill Analysis

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H.B. 35

131st General Assembly
(As Re-referred by H. Rules and Reference)

Reps. Retherford and Hood, Brenner, Zeltwanger, Thompson, Vitale, Becker, Maag, Kraus, Buchy, T. Johnson

BILL SUMMARY

- Prohibits an agency and its employees and agents from seizing a firearm from a person who is lawfully in possession or control of it, except when a law enforcement officer reasonably believes the immediate seizure of the firearm is necessary for a person's safety or for a criminal investigation.
- Requires that when a law enforcement officer seizes a firearm for safety reasons, the officer must return the firearm to the person if the person is not arrested, the firearm is not needed for a criminal investigation, and the reason for the seizure no longer exists.
- Prohibits a person, including state and federal law enforcement officers or international agents from enforcing or attempting to enforce a firearm ban or registration requirement imposed by law unless the requirement or ban is in effect before the bill's effective date.
- Prohibits a political subdivision from requiring a person to register a firearm or from establishing a firearm registry.

CONTENT AND OPERATION

Seizure of a firearm

The bill generally prohibits an agency or its employee or agent from seizing or authorizing the seizure of any firearm from any person who is lawfully in possession or control of it. However, under the bill, a law enforcement officer who is acting in the lawful discharge of the officer's duties may seize a firearm if the officer reasonably believes the immediate seizure of the firearm is necessary for the safety of the law

enforcement officer or another individual. The officer must return the firearm to the person if the person is not arrested, the firearm is not seized as evidence or for the investigation of a criminal offense, and the reason for the seizure no longer exists. An officer also may seize a firearm if it is necessary to preserve the firearm as evidence or for the investigation of a criminal offense.¹

Firearm bans and registration requirements

The bill prohibits any person, including a state or federal law enforcement officer or an international agent, from enforcing or attempting to enforce a firearm registration requirement or firearm ban in any statute or rule of Ohio or the United States, or any ordinance, resolution, or rule of a political subdivision, unless the registration requirement or ban is in effect before the bill's effective date (see **COMMENT 1**). Violating this prohibition is unlawful enforcement of a firearm registration requirement or firearm ban, a first degree felony.² Under continuing law, the maximum penalty for a first degree felony is a prison term of 11 years and a fine of not more than \$20,000.³

The bill also prohibits a political subdivision from requiring a person to register a firearm or from establishing a firearm registry (see **COMMENT 2**).⁴

Definitions

The following definitions apply to the provisions of the bill:⁵

- "Federal law enforcement officer" means an employee of the United States whose primary duties are the investigation, apprehension, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.
- "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, including an unloaded firearm and any firearm that is inoperable but that can readily be rendered operable.

¹ R.C. 5502.23.

² R.C. 5502.231(A) and (C).

³ R.C. 2929.14 and 2929.18, not in the bill.

⁴ R.C. 5502.231(B).

⁵ R.C. 5502.23 and 5502.231, by reference to 2329.11, 2921.421, and 2921.51.



- "Firearm ban" means any ban or prohibition on a person's possession of a firearm that is not based on the status or condition of the person or limited to the possession of a firearm in a school safety zone, courthouse, or other designated location.
- "Political subdivision" means any county or municipal corporation and any township that has adopted a limited home rule form of government.

For purposes of the entire bill, continuing law broadly defines "law enforcement officer" as including numerous types of local, state, and federal officers, for example, police officers, sheriffs, Ohio's organized militia, and the Armed Forces of the United States.

COMMENT

1. A reviewing court likely would rule that the General Assembly cannot ban federal or international law enforcement officers from enforcing a federal law requiring firearm registration or banning firearms, if Congress enacted such a law and the law was ruled constitutional. Under the Supremacy Clause of the U.S. Constitution, the Constitution and valid federal laws are the "supreme law of the land."⁶ The U.S. Supreme Court has overturned state laws that interfere with, or are contrary to, federal law.⁷

2. The provision of the bill that restricts the ability of political subdivisions to regulate firearms might be challenged on the ground that it interferes with municipal corporations' police power, which is a home rule power granted by the Ohio Constitution.⁸ The General Assembly may enact laws that supersede a conflicting municipal police ordinance only by enacting general laws that are comprehensive in nature, operate uniformly throughout the state, prescribe a rule of conduct, and do not merely grant or limit the legislative authority of a municipality.⁹ It is uncertain whether a reviewing court would find that the bill's prohibition is a general law.

⁶ U.S. Const., Article VI, clause 2.

⁷ See, e.g., *Perez v. Campbell*, 402 U.S. 637 (1971); *Edgar v. Mite Corp.*, 457 U.S. 624 (1982); *Gonzales v. Raich*, 545 U.S. 1 (2005); and *Arizona v. United States*, 132 S.Ct. 2492 (2012).

⁸ Ohio Const., Art. XVIII, sec. 3.

⁹ *City of Canton v. State*, 95 Ohio St.3d 149, 153 (2002).



HISTORY

ACTION	DATE
Introduced	02-03-15
Reported, H. Gov't Accountability & Oversight	02-18-15
Re-referred, H. Rules & Reference	02-19-15

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