

1 SB135  
2 173265-1  
3 By Senators Williams, Holtzclaw, Shelnut, Glover, McClendon,  
4 Bussman, Pittman, Hightower, Chambliss, Dial, Ward, Albritton,  
5 Stutts and Holley  
6 RFD: Governmental Affairs  
7 First Read: 03-FEB-16

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8 SYNOPSIS: Under existing law, the state occupies and  
9 preempts the entire field of regulation in this  
10 state touching in any way upon firearms,  
11 ammunition, and firearm accessories, with certain  
12 limited exceptions.

13 This bill would clarify that the occupation  
14 and preemption by the state expressly includes  
15 taxation and use of firearms, ammunition, and  
16 firearm accessories.

17 This bill would also prohibit counties and  
18 municipalities from imposing user fees or other  
19 special fees related solely to the ownership or use  
20 of a firearm, ammunition, or firearm accessory or  
21 from imposing additional restrictions on the  
22 issuance of pistol permits.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
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1           Relating to firearms; to amend Section 13A-11-61.3,  
2 Code of Alabama 1975, to specify that the state occupies the  
3 entire field of regulation of firearms, ammunition, and  
4 firearm accessories including taxation and use; and to specify  
5 that a county or municipality may not impose a user fee or  
6 other special fee related solely to the ownership or use of a  
7 firearm, ammunition, or firearm accessory.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9           Section 1. Section 13A-11-61.3, Code of Alabama  
10 1975, is amended to read as follows:

11           "§13A-11-61.3.

12           "(a) The purpose of this section is to establish  
13 within the Legislature complete control over regulation and  
14 policy pertaining to firearms, ammunition, and firearm  
15 accessories in order to ensure that such regulation and policy  
16 is applied uniformly throughout this state to each person  
17 subject to the state's jurisdiction and to ensure protection  
18 of the right to keep and bear arms recognized by the  
19 Constitutions of the State of Alabama and the United States.  
20 This section is to be liberally construed to accomplish its  
21 purpose.

22           "(b) For the purposes of this section, the following  
23 words shall have the following meanings:

24           "(1) AMMUNITION. Fixed cartridge ammunition, shotgun  
25 shells, the individual components of fixed cartridge  
26 ammunition and shotgun shells, projectiles for muzzle-loading  
27 firearms, and any propellant used in firearms or ammunition.

1           "(2) EXPRESSLY AUTHORIZED BY A STATUTE OF THIS  
2 STATE. The authority of a political subdivision to regulate  
3 firearms, ammunition, or firearm accessories that is granted  
4 by a duly enacted state law that specifically mentions  
5 firearms, a particular type of firearm, ammunition, or a  
6 particular type of ammunition.

7           "(3) FIREARM ACCESSORY. A device specifically  
8 designed or adapted to enable the wearing or carrying about  
9 one's person, or the storage or mounting in or on a  
10 conveyance, of a firearm, or an attachment or device  
11 specifically designed or adapted to be inserted into or  
12 affixed onto a firearm to enable, alter, or improve the  
13 functioning or capabilities of the firearm.

14           "(4) FIREARM. This term has the same meaning as in  
15 Section 13A-8-1(4).

16           "(5) PERSON ADVERSELY AFFECTED. Any of the  
17 following:

18           "a. A resident of this state who may legally possess  
19 a firearm under the laws of this state and the United States  
20 and who is either of the following:

21           "1. Subject to any manner of regulation alleged to  
22 be promulgated or enforced in violation of this section,  
23 whether or not specific enforcement action has been initiated  
24 or threatened against that person or another person.

25           "2. If the person were present in the political  
26 subdivision in question, subject to any manner of regulation  
27 alleged to be promulgated or enforced in violation of this

1 section, whether or not specific enforcement action has been  
2 initiated or threatened against that person or another person.

3 "b. A person who otherwise has standing under the  
4 laws of this state to bring an action under subsection (f).

5 "c. A membership organization if its members would  
6 otherwise have standing to sue in their own right, if the  
7 interests it seeks to protect are germane to the  
8 organization's purpose, and neither the claim asserted nor the  
9 relief requested requires the participation of individual  
10 members in the lawsuit.

11 "(6) POLITICAL SUBDIVISION. A county, incorporated  
12 city, unincorporated city, public local entity, public-private  
13 partnership, and any other public entity of a county or city  
14 commonly considered to be a political subdivision of the  
15 state.

16 "(7) PUBLIC OFFICIAL. Any person elected to public  
17 office, whether or not that person has taken office, by the  
18 vote of the people of a political subdivision or its  
19 instrumentalities, including governmental corporations, and  
20 any person appointed to a position at the municipal level of  
21 government or its instrumentalities, including governmental  
22 corporations.

23 "(8) REASONABLE EXPENSES. The expenses involved in  
24 litigation, including, but not limited to, expert witness  
25 fees, court costs, and compensation for loss of income.

26 "(c) Except as otherwise provided in Act 2013-283 or  
27 as expressly authorized by a statute of this state, the

1 Legislature hereby occupies and preempts the entire field of  
2 regulation in this state touching in any way upon firearms,  
3 ammunition, and firearm accessories, including the purchase,  
4 sale, transfer, taxation, manufacture, ownership, possession,  
5 use, storage, and transportation thereof, to the complete  
6 exclusion of any order, ordinance, or rule promulgated or  
7 enforced by any political subdivision of this state.

8 "(d) The authority of a political subdivision to  
9 regulate firearms, ammunition, or firearm accessories shall  
10 not be inferred from its proprietary authority, home rule  
11 status, or any other inherent or general power.

12 "(e) Any existing orders, ordinances, or rules  
13 promulgated or enforced contrary to the terms of this section  
14 are null and void and any future order, ordinance, or rules  
15 shall comply with this section.

16 "(f) (1) A person adversely affected by any order,  
17 ordinance, or rule promulgated in violation of this section  
18 may file a petition with the Attorney General requesting that  
19 he or she bring an action in circuit court for declarative and  
20 injunctive relief. The petition must be signed under oath and  
21 under penalty of perjury and must include specific details  
22 regarding the alleged violations.

23 "(2) If, after investigation of the enactment or  
24 adoption of the order, ordinance, or rule, the Attorney  
25 General determines that there is reasonable cause to proceed  
26 with an action, he or she shall provide the political  
27 subdivision or public official enacting or adopting the order,

1 ordinance, or rule 60 days' notice of his or her intent to  
2 file an action. Upon the expiration of the 60 days' notice,  
3 the Attorney General may file the suit.

4 "(3) If, after investigation of the enactment or  
5 adoption of the order, ordinance, or rule, the Attorney  
6 General determines that there is no reasonable cause to  
7 proceed with an action, he or she shall publicly state in  
8 writing the justification for the determination not to file  
9 suit.

10 "(4) The Attorney General shall either bring an  
11 action or publicly state, within 90 days of receipt of the  
12 petition, in the written justification why a violation of the  
13 spirit of this section, specifically subsections (a) and (c),  
14 has not occurred.

15 "(5) The court may award reimbursement for actual  
16 and reasonable expenses to a person adversely affected if an  
17 action under this subsection results in a final determination  
18 in favor of the person adversely affected.

19 "(g) This section shall not be construed to prevent  
20 any of the following:

21 "(1) A duly organized law enforcement agency of a  
22 political subdivision from promulgating and enforcing rules  
23 pertaining to firearms, ammunition, or firearm accessories  
24 that it issues to or that are used by the political  
25 subdivision's peace officers in the course of their official  
26 duties.

1           "(2) An employer from regulating or prohibiting an  
2 employee's carrying or possession of firearms, firearm  
3 accessories, or ammunition during and in the course of the  
4 employee's official duties.

5           "(3) A prosecutor, court or administrative law judge  
6 from hearing and resolving a case or controversy or issuing an  
7 opinion or order on a matter within its jurisdiction.

8           "(4) The enactment or enforcement of a generally  
9 applicable zoning or business ordinance that includes firearms  
10 businesses along with other businesses, provided that an  
11 ordinance designed or enforced effectively to restrict or  
12 prohibit the sale, purchase, transfer, manufacture, or display  
13 of firearms, ammunition, or firearm accessories that is  
14 otherwise lawful under the laws of this state is in conflict  
15 with this section and is void.

16           "(5) A political subdivision from enacting and  
17 enforcing rules of operation and use for any firearm range  
18 owned or operated by the political subdivision.

19           "(6) A political subdivision from sponsoring or  
20 conducting any firearm-related competition or educational or  
21 cultural program and from enacting and enforcing rules for  
22 participation in or attendance at such program, provided that  
23 nothing in this section authorizes or permits a political  
24 subdivision to offer remuneration for the surrender or  
25 transfer of a privately owned firearm to the political  
26 subdivision or another party as a method of reducing the



1 number of privately owned firearms within the political  
2 subdivision.

3 "(7) Any official of a political subdivision, a  
4 sheriff, or other law enforcement officer with appropriate  
5 authority and jurisdiction from enforcing any law enacted by  
6 the Legislature.

7 "(8) A sheriff of a county from acting on an  
8 application for a permit under Section 13A-11-75. This  
9 subdivision may not be construed to authorize a sheriff of a  
10 county to impose user fees, other special fees, or additional  
11 restrictions, procedures, or requirements for the issuance of  
12 a permit other than those enumerated in Section 13A-11-75 or  
13 other applicable general law.

14 "(9) A political subdivision from leasing public  
15 property to another person or entity for a gun show or other  
16 firearm-related event on terms agreeable to both parties.

17 "(10) The adoption or enforcement by a county or  
18 municipality of ordinances which make the violation of a state  
19 firearm law a violation of an ordinance, provided that the  
20 elements of the local ordinance may not differ from the state  
21 firearm law, nor may the local ordinance impose a higher  
22 penalty than what is imposed under the state firearm law.

23 "(11) A municipality from regulating the discharge  
24 of firearms within the limits of the municipality or a county  
25 from exercising any authority it has under law, to regulate  
26 the discharge of firearms within the jurisdiction of the  
27 county. The discharge of a firearm in defense of one's self or

1 family or in defense of one's property may not be construed to  
2 be a violation of state law or any ordinance or rule of a  
3 political subdivision of this state.

4 "(12) A county or a municipality from exercising any  
5 authority it has to assess, enforce, and collect generally  
6 applicable sales taxes, use taxes, and gross receipts taxes in  
7 the nature of sales taxes as defined by Section 40-2A-3(8), on  
8 the retail sale of firearms, ammunition, and firearm  
9 accessories along with other goods, provided that no such tax  
10 imposed by a county or municipality may apply at a higher rate  
11 to firearms, ammunition, or firearm accessories than the  
12 general sales tax rate of the jurisdiction. This subdivision  
13 may not be construed to authorize a county or municipality to  
14 impose user fees, other special fees, or additional  
15 restrictions, procedures, or requirements related solely to  
16 the ownership or use of a firearm, ammunition, or firearm  
17 accessory."

18 Section 2. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.