

1 HB349  
2 209088-4  
3 By Representative Allen  
4 RFD: Judiciary  
5 First Read: 04-FEB-21

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing constitutional law, the  
9 federal government may not require a state or its  
10 officers to administer or enforce a federal  
11 regulatory program.

12 This bill would create the Alabama Second  
13 Amendment Preservation Act to prohibit the state  
14 and its agencies and political subdivisions from  
15 participating in the enforcement of any federal  
16 act, law, order, rule, or regulation relating to  
17 firearms, firearm accessories, or ammunition.

18 This bill would also provide criminal  
19 penalties for a violation.

20 Under existing constitutional law, the  
21 United States Congress is given the authority to  
22 regulate interstate commerce.

23 This bill would provide that firearms,  
24 firearm accessories, and ammunition that are  
25 manufactured in this state and remain in this  
26 state, and are therefore only engaged in intrastate  
27 commerce, are not subject to federal law or

1 regulation, including registration, under the  
2 authority of the United State Congress to regulate  
3 interstate commerce.

4 Amendment 621 of the Constitution of Alabama  
5 of 1901, now appearing as Section 111.05 of the  
6 Official Recompilation of the Constitution of  
7 Alabama of 1901, as amended, prohibits a general  
8 law whose purpose or effect would be to require a  
9 new or increased expenditure of local funds from  
10 becoming effective with regard to a local  
11 governmental entity without enactment by a 2/3 vote  
12 unless: it comes within one of a number of  
13 specified exceptions; it is approved by the  
14 affected entity; or the Legislature appropriates  
15 funds, or provides a local source of revenue, to  
16 the entity for the purpose.

17 The purpose or effect of this bill would be  
18 to require a new or increased expenditure of local  
19 funds within the meaning of the amendment. However,  
20 the bill does not require approval of a local  
21 governmental entity or enactment by a 2/3 vote to  
22 become effective because it comes within one of the  
23 specified exceptions contained in the amendment.

24  
25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

1  
2           Relating to firearms; to provide prohibitions on the  
3 enforcement of federal laws relating to firearms and  
4 accessories and ammunition thereof; to provide criminal  
5 penalties for a violation; to provide that certain firearms,  
6 firearm accessories, and ammunition that are manufactured in  
7 this state are not subject to federal law or regulation; and  
8 in connection therewith would have as its purpose or effect  
9 the requirement of a new or increased expenditure of local  
10 funds within the meaning of Amendment 621 of the Constitution  
11 of Alabama of 1901, now appearing as Section 111.05 of the  
12 Official Recompilation of the Constitution of Alabama of 1901,  
13 as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15           Section 1. This act shall be known and may be cited  
16 as the Alabama Second Amendment Preservation Act.

17           Section 2. (a) The Legislature finds and declares  
18 all of the following:

19                 (1) The Second Amendment to the United States  
20 Constitution protects an individual's right to "keep and bear  
21 arms" and further provides that the right to keep and bear  
22 arms may not be infringed.

23                 (2) It is the intent of the Legislature to protect  
24 Alabama employees, including law enforcement officers, from  
25 being directed, through federal executive orders, agency  
26 orders, statutes, laws, rules, or regulations that violate  
27 their oath of office and individual rights affirmed under the

1 Second Amendment of the United States Constitution and Section  
2 26 of the Constitution of Alabama of 1901.

3 (3) Pursuant to and in furtherance of the principles  
4 of federalism enshrined in the United States Constitution, the  
5 federal government may not commandeer this state's officers,  
6 agents, or employees to participate in the enforcement or  
7 facilitation of any federal program not expressly required by  
8 the United States Constitution.

9 (4) The right to be free from the commandeering hand  
10 of the federal government has been most notably recognized by  
11 the United States Supreme Court in *Printz v. United States*,  
12 521 U.S. 898 (1997), when the Court held: "The Federal  
13 Government may neither issue directives requiring the States  
14 to address particular problems, nor command the States'  
15 officers, or those of their political subdivisions, to  
16 administer or enforce a federal regulatory program."

17 (5) The anti-commandeering principles recognized by  
18 the U.S. Supreme Court in *Printz* are predicated upon the  
19 advice of James Madison, who, in *The Federalist No. 46*, argued  
20 for a "refusal to cooperate with officers of the Union" when  
21 faced with unconstitutional federal measures or  
22 constitutional, but unpopular, federal measures.

23 (b) (1) Notwithstanding any provision of law to the  
24 contrary, no public funds of this state or any political  
25 subdivision of this state may be allocated for the  
26 implementation, regulation, or enforcement of any executive  
27 order or directive issued by the President of the United

1 States, or of any act of the United States Congress, that  
2 becomes effective after January 1, 2021, that regulates the  
3 ownership, use, or possession of firearms, ammunition, or  
4 firearm accessories.

5 (2) Notwithstanding any provision of law to the  
6 contrary, no property of this state, or any political  
7 subdivision of this state, shall be allocated for the  
8 implementation, regulation, or enforcement of any executive  
9 order or directive issued by the President of the United  
10 States, or any act of the United States Congress, that becomes  
11 effective after January 1, 2021, that regulates the ownership,  
12 use, or possession of firearms, ammunition, or firearm  
13 accessories.

14 (3) Notwithstanding any provision of law to the  
15 contrary, no appointed or elected official, officer, employee,  
16 or agent of the state, or any political subdivision of the  
17 state, when acting in an official capacity, shall implement,  
18 administer, or enforce an executive order or directive issued  
19 by the President of the United States, or any act of the  
20 United States Congress, that becomes effective after January  
21 1, 2021, that regulates the ownership, use, or possession of  
22 firearms, ammunition, or firearm accessories.

23 (c) (1) Any appointed or elected official, officer,  
24 employee, or agent of the state, or any political subdivision  
25 of the state, who knowingly violates this section, on a first  
26 violation, shall be guilty of a Class C misdemeanor and shall

1 be fined not less than five hundred dollars (\$500) or more  
2 than five thousand dollars (\$5,000).

3 (2) An appointed or elected official, officer,  
4 employee, or agent of the state, or any political subdivision  
5 of the state, who knowingly violates this section, on a second  
6 or subsequent violation, shall be guilty of a Class B  
7 misdemeanor and shall be fined not less than one thousand  
8 dollars (\$1,000) or more than seven thousand dollars (\$7,000).

9 Section 3. (a) (1) Upon the adoption of a rule,  
10 order, ordinance, resolution, or other official policy by a  
11 political subdivision of the state which intentionally  
12 requires actions that violate Section 2, a resident of this  
13 state may file a complaint with the Attorney General. The  
14 complaint shall include evidence supporting an allegation that  
15 the political subdivision has adopted a rule, order,  
16 ordinance, resolution, or policy under which the entity  
17 enforces a federal law in violation of Section 2.

18 (2) If the Attorney General determines that a  
19 complaint filed under subdivision (1) is valid, the Attorney  
20 General may petition the court to compel compliance with this  
21 act. The petition shall be filed in the circuit court of the  
22 county in which the principal office of the political  
23 subdivision is located.

24 (3) Upon a finding that political subdivision is in  
25 violation of Section 2, the court shall award the Attorney  
26 General reasonable expenses incurred in obtaining relief under

1 this section, including court costs, reasonable attorney's  
2 fees, investigative costs, witness fees, and deposition costs.

3 (b) Following the year in which a final judicial  
4 determination in an action brought under this section is made  
5 that the political subdivision has intentionally required  
6 actions that violate Section 2, all state grant funds for the  
7 political subdivision shall be denied for the fiscal year. The  
8 state grant funds shall continue to be denied for each  
9 subsequent fiscal year unless and until the political  
10 subdivision is in full compliance with Section 2.

11 Section 4. (a) The Legislature finds and declares  
12 all of the following:

13 (1) The Tenth Amendment to the United States  
14 Constitution guarantees to the states and their people all  
15 powers not granted to the federal government elsewhere in the  
16 United States Constitution and reserves to the State of  
17 Alabama and its people certain powers as they were understood  
18 at the time that Alabama was admitted to statehood in 1819,  
19 and the guaranty of these powers is a matter of contract  
20 between the State of Alabama and its people and the United  
21 States as of the time that the compact with the United States  
22 was agreed upon and adopted by Alabama and the United States  
23 in 1819.

24 (2) The Ninth Amendment to the United States  
25 Constitution guarantees to the people rights not granted in  
26 the United States Constitution and reserves to the people of  
27 Alabama certain rights as they were understood at the time



1 Alabama was admitted into statehood in 1819, and the guaranty  
2 of these rights is a matter of contract between the State of  
3 Alabama and its people and the United States as of the time  
4 that the compact with the United States was agreed upon and  
5 adopted by Alabama and the United States in 1819.

6 (3) The power to regulate intrastate commerce is  
7 vested in the several states under the Ninth and Tenth  
8 Amendments to the United States Constitution.

9 (4) The Second Amendment to the United States  
10 Constitution reserves to the people the right to keep and bear  
11 arms as that right was understood at the time that Alabama was  
12 admitted into statehood in 1819, and the guaranty of that  
13 right is a matter of contract between the State of Alabama and  
14 its people and the United States as of the time that the  
15 compact with the United States was agreed upon and adopted by  
16 Alabama and the United States in 1819.

17 (b) As used in this section, the following terms  
18 shall have the following meanings:

19 (1) FIREARM ACCESSORY. An item that is used in  
20 conjunction with or mounted onto a firearm, but is not  
21 essential to the basic function of the firearm. The term  
22 includes a telescopic or laser sight, magazine, flash or sound  
23 suppressor, folding or aftermarket stock and grip,  
24 speedloader, ammunition carrier, and light for target  
25 illumination.

26 (2) GENERIC AND INSIGNIFICANT PART. An item that has  
27 manufacturing or consumer product applications other than

1 inclusion in a firearm, a firearm accessory, or ammunition.  
2 The term includes a spring, screw, nut, and pin.

3 (3) MANUFACTURED IN THIS STATE. An item that is  
4 manufactured in this state from basic materials and without  
5 the inclusion of any part imported from another state other  
6 than a generic and insignificant part. Notwithstanding the  
7 foregoing, a firearm is manufactured in this state if it is  
8 manufactured as described in the preceding sentence without  
9 regard to whether a firearm accessory or ammunition imported  
10 into this state from another state is attached to or used in  
11 conjunction with it.

12 (4) MANUFACTURING. The term includes forging,  
13 casting, machining, or any other process used for working a  
14 material.

15 (c) Subject to subsection (e), a firearm, a firearm  
16 accessory, or ammunition that is commercially or privately  
17 manufactured in Alabama, that is sold in Alabama, and that  
18 remains within the borders of Alabama is not subject to  
19 federal law or regulation, including registration, under the  
20 authority of the United State Congress to regulate interstate  
21 commerce, as the item has not traveled in interstate commerce.

22 (d)(1) This section applies to firearms, ammunition,  
23 or firearm accessories that are manufactured in Alabama from  
24 basic materials and that can be manufactured without the  
25 inclusion of any significant parts imported from another  
26 state.

1           (2) Generic and insignificant parts that have other  
2 manufacturing or consumer product applications are not  
3 firearms, ammunition, or firearm accessories, and their  
4 importation into Alabama and incorporation into a firearm,  
5 ammunition, or a firearm accessory manufactured in Alabama  
6 does not subject the firearm, ammunition, or firearm accessory  
7 to federal regulation.

8           (3) A basic material from which a firearm, a firearm  
9 accessory, or ammunition is manufactured in this state,  
10 including unmachined steel and unshaped wood, is not a  
11 firearm, a firearm accessory, or ammunition and is not subject  
12 to federal regulation under the authority of the United States  
13 Congress to regulate interstate commerce as if it actually  
14 were a firearm, a firearm accessory, or ammunition.

15           (e) A firearm manufactured in this state is exempt  
16 from federal law or regulation under subsection (c) only if  
17 the firearm has the words "Made in Alabama" clearly stamped on  
18 a central metallic part of the firearm, such as the receiver  
19 or frame.

20           (f) The Attorney General shall defend a resident of  
21 this state whom the federal government attempts to prosecute,  
22 claiming the power to regulate interstate commerce, for a  
23 violation of a federal law or regulation concerning the  
24 manufacture, sale, transfer, or possession of firearms,  
25 ammunition, or firearm accessories manufactured and retained  
26 in this state.

1 (g) This section does not apply to any of the  
2 following:

3 (1) A firearm that cannot be carried and used by one  
4 person.

5 (2) A firearm that has a bore diameter greater than  
6 1.5 inches and that uses smokeless powder and not black powder  
7 as a propellant.

8 (3) Ammunition with a projectile that explodes using  
9 an explosion of chemical energy after the projectile leaves  
10 the firearm.

11 (4) A firearm that discharges two or more  
12 projectiles with one activation of the trigger or other firing  
13 device.

14 Section 5. (a) The following federal acts, laws,  
15 executive orders, administrative orders, court orders, rules,  
16 and regulations shall be considered infringements on the  
17 people's right to keep and bear arms, as guaranteed by the  
18 Second Amendment to the United States Constitution, within the  
19 borders of this state, including, but not limited to, all of  
20 the following:

21 (1) Any tax, levy, fee, or stamp imposed on  
22 firearms, ammunition, or firearm accessories not common to all  
23 other goods and services that might reasonably be expected to  
24 create a chilling effect on the purchase or ownership of those  
25 items by law abiding residents of the state.

26 (2) Any registration or tracking of firearms,  
27 ammunition, or firearm accessories that might reasonably be

1 expected to create a chilling effect on the purchase or  
2 ownership of those items by law abiding residents of the  
3 state.

4 (3) Any registration or tracking of the owners of  
5 firearms, ammunition, or firearm accessories that might  
6 reasonably be expected to create a chilling effect on the  
7 purchase or ownership of those items by law abiding residents  
8 of the state.

9 (4) Any act forbidding the possession, ownership,  
10 use, or transfer of a firearm, ammunition, or firearm  
11 accessory by law abiding residents of the state.

12 (5) Any act ordering the confiscation of firearms,  
13 ammunition, or firearm accessories from law abiding residents  
14 of the state.

15 (b) A federal act, law, executive order,  
16 administrative order, court order, rule, or regulation that  
17 infringes on a person's right to keep and bear arms as  
18 provided under subsection (a) shall be void and of no effect  
19 in this state.

20 (c) As used in this section, the term "law abiding  
21 residents of the state" includes those individuals not  
22 otherwise precluded under state law from possessing a firearm.

23 Section 6. The provisions of this act are severable  
24 and if any provision of this act or the application of such  
25 provision to any person or circumstance is declared invalid  
26 for any reason, such declaration shall not affect the validity  
27 of the remaining portions of this act.

1                   Section 7. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.