

2023 Regular Session

HOUSE BILL NO. 130

BY REPRESENTATIVE MCCORMICK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WEAPONS/FIREARMS: Provides relative to enforcement of federal firearm laws

1 AN ACT

2 To enact Part V of Chapter 9 of Title 40 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 40:1813 through 1819, relative to enforcement of federal firearm
4 laws; to enact the "Defense of the Second Amendment Act"; to provide for a
5 statement of legislative intent; to provide for definitions; to provide relative to
6 infringements on a citizen's right to keep and bear arms; to prohibit enforcement of
7 federal firearm laws; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part V of Chapter 9 of Title 40 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 40:1813 through 1819, is hereby enacted to read as follows:

11 PART V. DEFENSE OF THE SECOND AMENDMENT ACT

12 §1813. Short title

13 This Part shall be known and may be cited as the "Defense of the Second
14 Amendment Act".

15 §1814. Legislative intent

16 The legislature finds and declares all of the following:

17 (1) The Louisiana Legislature is firmly resolved to support and defend the
18 United States Constitution against every aggression, whether foreign or domestic,
19 and is duty bound to oppose every infraction of those principles that constitute the

1 basis of the union of the states because only a faithful observance of those principles
2 can secure the nation's existence and the public happiness.

3 (2) The people of the original thirteen states, acting through the United States
4 Constitution, created the federal government to be their agent in the exercise of a few
5 defined powers, while reserving to the state governments the power to legislate on
6 matters that concern the lives, liberties, and properties of citizens in the ordinary
7 course of affairs.

8 (3) The limitation of the federal government's power is affirmed under the
9 Tenth Amendment to the United States Constitution, which defines the total scope
10 of federal power as being that which has been delegated by the people of the several
11 states to the federal government. All power not delegated to the federal government
12 in the United States Constitution is reserved to the states respectively, or to the
13 people themselves.

14 (4) Whenever the federal government assumes powers that the people did not
15 grant it in the United States Constitution, its acts are unauthoritative, void, and have
16 no force.

17 (5) The several states of the United States of America respect the proper role
18 of the federal government, but reject the proposition that such respect requires
19 unlimited submission. If the government, created by a compact among the states,
20 was the exclusive or final judge of the extent of the powers granted to it by the states
21 through the United States Constitution, the federal government's discretion, and not
22 the United States Constitution, would necessarily become the measure of those
23 powers. To the contrary, as in all other cases of compacts among powers having no
24 common judge, each party has an equal right to judge for itself as to whether
25 infractions of the compact have occurred, as well as to determine the mode and
26 measure of redress. Although the several states have granted supremacy to laws and
27 treaties made under the powers granted in the United States Constitution, such
28 supremacy does not extend to various federal statutes, executive orders,
29 administrative orders, court orders, rules, regulations, or other actions which restrict

1 or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or
2 ammunition exclusively within the borders of Louisiana. All such statutes, executive
3 orders, administrative orders, court orders, rules, regulations, and other actions
4 exceed the powers granted to the federal government except to the extent they are
5 necessary and proper for governing and regulating land and naval forces of the
6 United States or for organizing, arming, and disciplining of militia forces actively
7 employed in the service of the armed forces of the United States.

8 (6) The people of the original thirteen states gave congress the power to
9 regulate commerce with foreign nations, and among the several states, but regulation
10 of commerce does not include the power to limit the right of citizens to keep and
11 bear arms in defense of their families, neighbors, persons, or property, or to dictate
12 as to what sort of arms and accessories law-abiding Louisianans may buy, sell,
13 exchange, or otherwise possess within the borders of this state.

14 (7) The people of the original thirteen states also granted congress the power
15 to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide
16 for the common defense and general welfare of the United States and to make all
17 laws which shall be necessary and proper for carrying into execution the powers
18 vested by the United States Constitution in the government of the United States, or
19 in any department or office thereof. These constitutional provisions merely identify
20 the means by which the federal government may execute its limited powers and shall
21 not be so construed to grant unlimited power because to do so would be to destroy
22 the carefully constructed equilibrium between the federal and state governments.
23 Consequently, the legislature rejects any claim that the taxing and spending powers
24 of congress can be used to diminish in any way the right of the people to keep and
25 bear arms.

26 (8) The people of Louisiana vested the legislature with the authority to
27 regulate the manufacture, possession, exchange, and use of firearms within the
28 borders of this state, subject only to the limits imposed by the Second Amendment

1 to the Constitution of the United States and by Article I, Section 11 of the
2 Constitution of Louisiana.

3 (9) The Louisiana Legislature strongly promotes responsible gun ownership,
4 including parental supervision of minors in the proper use, storage, and ownership
5 of all firearms, the prompt reporting of stolen firearms, and the proper enforcement
6 of all state gun laws. The Louisiana Legislature hereby condemns any unlawful
7 transfer of firearms and the use of any firearm in any criminal or unlawful activity.

8 §1815. Definitions

9 For the purposes of this Part, the following terms shall have the following
10 meanings:

11 (1) "Elected state official" means a person holding an office in a
12 governmental entity of the state or any of its political subdivisions which is filled by
13 the vote of the appropriate electorate.

14 (2) "Federal employee" means a person who is any of the following:

15 (a) An administrative officer or official of a federal agency who is not an
16 elected official.

17 (b) Appointed to a federal post or position created by rule, law, resolution,
18 ordinance, charter, or executive order.

19 (c) Employed by a federal agency.

20 (3) "Federal law enforcement officer" shall mean any officer, agent, or
21 employee of the United States whose permanent duties include making arrests,
22 performing search and seizures, execution of criminal arrest warrants, execution of
23 civil seizure warrants, supervision of the care, custody, or control of inmates, or
24 otherwise acts under the color of federal law while within the borders of this state.

25 (4) "Law-abiding citizen" shall mean any person who is not otherwise
26 precluded under state law from possessing a firearm and shall not be construed to
27 include anyone who is not legally present in the United States or the state of
28 Louisiana.

1 (5) "State employee" means a person who is any of the following:

2 (a) An administrative officer or official of a state agency who is not an
3 elected official.

4 (b) Appointed to a post or position created by rule, law, resolution,
5 ordinance, charter, or executive order.

6 (c) Employed by a state agency.

7 (6) "Law enforcement officer" shall mean any active or retired city, parish,
8 or state law enforcement officer, peace officer, sheriff, deputy sheriff, probation or
9 parole officer, marshal, deputy, wildlife enforcement agent, state correctional officer,
10 or a commissioned agent of the Department of Public Safety and Corrections whose
11 permanent duties include making arrests, performing search and seizures, execution
12 of criminal arrest warrants, execution of civil seizure warrants, any civil functions
13 performed by sheriffs or deputy sheriffs, enforcement of penal or traffic laws, or the
14 care, custody, control, or supervision of inmates.

15 (7) "Supervisor" shall mean any person who is in charge or in command of
16 federal or state law enforcement officers.

17 §1816. Prohibition

18 A. It shall be considered an infringement on the right of the people to keep
19 and bear arms, as guaranteed by the Second Amendment of the Constitution of the
20 United States and Article I, Section 11 of the Constitution of Louisiana, if any
21 federal act, law, executive order, administrative order, court order, rule, or regulation
22 is enforced within the borders of this state that effectuates any of the following
23 actions:

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

1 (2) Any registering or tracking of firearms, firearm accessories, or
2 ammunition which might reasonably be expected to create a chilling effect on the
3 purchase or ownership of those items by law-abiding citizens.

4 (3) Any registering or tracking of the owners of firearms, firearm
5 accessories, or ammunition which might reasonably be expected to create a chilling
6 effect on the purchase or ownership of those items by law-abiding citizens.

7 (4) Any act forbidding the possession, ownership, or use or transfer of a
8 firearm, firearm accessory, or ammunition by law-abiding citizens.

9 (5) Any act ordering the confiscation of firearms, firearm accessories, or
10 ammunition from law-abiding citizens.

11 B. Any federal act, law, executive order, administrative order, court order,
12 rule, or regulation shall be invalid and have no effect in this state if the rule or
13 regulation meets both of the following criteria:

14 (1) It was enacted after January 20, 2021.

15 (2) It infringes on the right of law-abiding citizens to keep and bear arms as
16 guaranteed by the Second Amendment to the Constitution of the United States and
17 Article I, Section 11 of the Constitution of Louisiana.

18 §1817. Duties of courts and law enforcement agencies

19 The courts and law enforcement agencies of this state have an affirmative
20 duty to protect the rights of law-abiding citizens to keep and bear arms within the
21 borders of this state and to protect these rights from the infringements as provided
22 in R.S. 40:1816.

23 §1818. Prohibited acts; state employees; elected state officials; right of action;
24 award of fees and costs; limitation of immunities

25 A. No state employee, elected state official, or law enforcement officer shall
26 have the authority to enforce or attempt to enforce within the borders of this state any
27 federal act, law, executive order, administrative order, court order, rule, or regulation
28 that infringes on the right to keep and bear arms as provided in R.S. 40:1816.

1 B. Whoever violates the provisions of Subsection A of this Section shall be
2 imprisoned at hard labor for not more than five years and shall be permanently
3 ineligible to serve as a law enforcement officer or to supervise law enforcement
4 officers for the state or any political subdivision of the state.

5 C. Neither the state nor any political subdivision of the state shall employ
6 any person as a law enforcement officer or supervisor if he is found to be ineligible
7 to serve in such capacity under this Section.

8 D. Any state employee, elected state official, or law enforcement officer who
9 violates the provisions of Subsection A of this Section or otherwise deprives a citizen
10 of Louisiana of the rights or privileges ensured by the Second Amendment of the
11 Constitution of the United States or Article I, Section 11 of the Constitution of
12 Louisiana, while acting under the color of any state or federal law, shall be civilly
13 liable for deprivation of these rights or privileges.

14 (1) In such actions, the court may award the prevailing party, other than the
15 state or any political subdivision of the state, reasonable attorney fees and costs.

16 (2) Sovereign, official, or qualified immunity shall not be allowed as an
17 affirmative defense in such actions.

18 E.(1) A person shall have standing to pursue an action for declaratory
19 judgment against a law enforcement officer or supervisor regarding the employment
20 eligibility of the law enforcement officer or supervisor when the person believes that
21 a violation of Subsection A of this Section has occurred and the person resides within
22 or conducts business within a jurisdiction where the violation occurs.

23 (2) Such action shall be filed in the district court of the parish where the
24 action allegedly occurred or in the Nineteenth Judicial District.

25 F. If the court determines that a law enforcement officer or supervisor has
26 taken any action that would render him ineligible to serve in that capacity under this
27 Section, then the court shall order both of the following:

28 (1) The law enforcement officer or supervisor shall immediately be
29 terminated from his position.

1 (2) The agency or political subdivision that employed the ineligible law
2 enforcement officer or supervisor shall be required to pay the court costs and
3 attorney fees associated with the action for declaratory judgment that resulted in the
4 finding of ineligibility.

5 G. Nothing in this Section shall preclude a person's right of appeal,
6 grievance, or remediation otherwise provided by applicable law.

7 §1819. Prohibited acts; federal employees; federal law enforcement officers

8 A.(1) No federal employee or federal law enforcement officer shall enforce
9 or attempt to enforce within the borders of this state any federal act, law, executive
10 order, administrative order, court order, rule, or regulation that infringes on the right
11 to keep and bear arms as provided in R.S. 40:1816.

12 (2) No federal employee or federal law enforcement officer shall give or
13 attempt to give material aid or support to enforce within the borders of this state any
14 federal act, law, executive order, administrative order, court order, rule, or regulation
15 that infringes on the right to keep and bear arms as provided in R.S. 40:1816.

16 B. Whoever violates the provisions of Subsection A of this Section shall be
17 imprisoned at hard labor for not more than one year.

18 C. No person shall be employed as a federal law enforcement officer or
19 supervisor in this state if he is found to be ineligible to serve in such capacity under
20 this Section.

21 D. Any federal employee or federal law enforcement officer who violates the
22 provisions of Subsection A of this Section or otherwise deprives a citizen of
23 Louisiana of the rights or privileges ensured by the Second Amendment of the
24 Constitution of the United States or Article I, Section 11 of the Constitution of
25 Louisiana, while acting under the color of any state or federal law, shall be civilly
26 liable for deprivation of these rights or privileges.

27 (1) In such actions, the court may award the prevailing party, other than the
28 state or any political subdivision of the state, reasonable attorney fees and costs.

1 (2) Sovereign, official, or qualified immunity shall not be allowed as an
2 affirmative defense in such actions.

3 E.(1) A person shall have standing to pursue an action for declaratory
4 judgment against a federal law enforcement officer or supervisor regarding the
5 employment eligibility of a federal law enforcement officer or supervisor when a
6 person believes that a violation of Subsection A of this Section has occurred and the
7 person resides within or conducts business within a jurisdiction where the violation
8 occurs.

9 (2) Such action shall be filed in the federal or state district court of the parish
10 where the action allegedly occurred or in the Nineteenth Judicial District.

11 F. If the court determines that the federal law enforcement officer or
12 supervisor has taken any action that would render him ineligible to serve in that
13 capacity under this Section, then the court shall order both of the following:

14 (1) The federal law enforcement officer or supervisor shall immediately be
15 terminated from his position.

16 (2) The agency or political subdivision that employed the ineligible federal
17 law enforcement officer or supervisor shall be required to pay the court costs and
18 attorney fees associated with the action for declaratory judgment that resulted in the
19 finding of ineligibility.

20 G. Nothing in this Section shall preclude a person's right of appeal,
21 grievance, or remediation otherwise provided by applicable law.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 130 Original

2023 Regular Session

McCormick

Abstract: Creates the "Defense of the Second Amendment Act" and provides relative to infringements on the right of a citizen to keep and bear arms.

Proposed law shall be known and may be cited as the "Defense of the Second Amendment Act".

Proposed law provides for a statement of legislative intent.

Proposed law provides for definitions for the terms "elected state official", "federal employee", "federal law enforcement officer", "law-abiding citizen", "law enforcement officer", "state employee", and "supervisor".

Proposed law provides that it shall be considered an infringement on the right of the people to keep and bear arms, as guaranteed by the Second Amendment of the Constitution of the United States and present constitution (Art. I, Sec. 11) if any federal act, law, executive order, administrative order, court order, rule, or regulation is enforced within the borders of this state that effectuates any of the following actions:

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

Proposed law provides that any federal act, law, executive order, administrative order, court order, rule, or regulation shall be invalid and have no effect in this state if the rule or regulation meets both of the following criteria:

- (1) It was enacted after Jan. 20, 2021.
- (2) It infringes on the right of the people to keep and bear arms as guaranteed by the Second Amendment to the Constitution of the United States and present constitution (Art. I, Sec. 11).

Proposed law provides that the courts and law enforcement agencies of this state have an affirmative duty to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements as provided in proposed law.

Proposed law provides that no state employee, elected state official, or law enforcement officer shall have the authority to enforce or attempt to enforce within the borders of this state any federal act, law, executive order, administrative order, court order, rule, or regulation that infringes on the right to keep and bear arms as provided in proposed law.

Proposed law provides that whoever violates proposed law shall be imprisoned at hard labor for not more than five years and shall be permanently ineligible to serve as a law enforcement officer or to supervise law enforcement officers for the state or any political subdivision of the state.

Proposed law provides that neither the state nor any political subdivision of the state shall employ any person as a law enforcement officer or supervisor if he is found to be ineligible to serve in such capacity under proposed law.

Proposed law provides that any state employee, elected state official, or law enforcement officer who violates the provisions of proposed law or otherwise deprives a citizen of La. of the rights or privileges ensured by the Second Amendment of the Constitution of the United States or present constitution (Art. I, Sec. 11) while acting under the color of any state or federal law shall be civilly liable for deprivation of these rights or privileges.

Proposed law provides that in such civil actions, the court may award the prevailing party, other than the state or any political subdivision of the state, reasonable attorney fees and costs. Further provides that sovereign, official, or qualified immunity shall not be allowed as an affirmative defense in such civil actions.

Proposed law provides that a person shall have standing to pursue an action for declaratory judgment against a law enforcement officer or supervisor regarding the law enforcement officer or supervisor's employment eligibility when a person believes that a violation of proposed law has occurred and the person resides within or conducts business within a jurisdiction where the violation occurs.

Proposed law provides that such action for declaratory judgment shall be filed in the district court of the parish where the action allegedly occurred, or in the 19th Judicial District.

Proposed law provides that if the court determines that a law enforcement officer or supervisor has taken any action that would render him ineligible to serve in that capacity under proposed law, then the court shall order both of the following:

- (1) The law enforcement officer or supervisor shall immediately be terminated from his position.
- (2) The agency or political subdivision that employed the ineligible law enforcement officer or supervisor shall be required to pay the court costs and attorney fees associated with the action for declaratory judgment that resulted in the finding of ineligibility.

Proposed law provides that nothing in proposed law shall preclude a person's right of appeal, grievance, or remediation otherwise provided by applicable law.

Proposed law provides that no federal employee or federal law enforcement officer shall enforce or attempt to enforce within the borders of this state any federal act, law, executive order, administrative order, court order, rule, or regulation that infringes on the right to keep and bear arms as provided in proposed law.

Proposed law provides that no federal employee or federal law enforcement officer shall give or attempt to give material aid or support to enforce within the borders of this state any federal act, law, executive order, administrative order, court order, rule, or regulation that infringes on the right to keep and bear arms as provided in proposed law.

Proposed law provides that whoever violates the provisions of proposed law shall be imprisoned at hard labor for not more than one year.

Proposed law provides that no person shall be employed as a federal law enforcement officer or supervisor in this state if he is found to be ineligible to serve in such capacity under proposed law.

Proposed law provides that any federal employee or federal law enforcement officer who violates the provisions of proposed law or otherwise deprives a citizen of La. of the rights or privileges ensured by the Second Amendment of the Constitution of the United States or present constitution (Art. I, Sec. 11) while acting under the color of any state or federal law shall be civilly liable for deprivation of these rights or privileges.

Proposed law provides that in such civil actions, the court may award the prevailing party, other than the state or any political subdivision of the state, reasonable attorney fees and costs. Further provides that sovereign, official, or qualified immunity shall not be allowed as an affirmative defense in such civil actions.

Proposed law provides that a person shall have standing to pursue an action for declaratory judgment against a federal law enforcement officer or supervisor regarding the federal law enforcement officer or supervisor's employment eligibility when a person believes that a violation of proposed law has occurred and the person resides within or conducts business within a jurisdiction where the violation occurs.

Proposed law provides that such action shall be filed in the federal or state district court of the parish where the action allegedly occurred, or in the 19th Judicial District.

Proposed law provides that if the court determines that the federal law enforcement officer or supervisor has taken any action that would render him ineligible to serve in that capacity under proposed law, then the court shall order both of the following:

- (1) The federal law enforcement officer or supervisor shall immediately be terminated from his position.
- (2) The agency or political subdivision that had employed the ineligible federal law enforcement officer or supervisor shall be required to pay the court costs and attorney fees associated with the action for declaratory judgment that resulted in the finding of ineligibility.

Proposed law provides that nothing in proposed law shall preclude a person's right of appeal, grievance, or remediation otherwise provided by applicable law.

(Adds R.S. 40:1813-1819)