

Senator Chris H. Wilson proposes the following substitute bill:

FIREARM PREEMPTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill addresses the Legislature's preemption of the field of firearm regulation for the state.

Highlighted Provisions:

- This bill:
- ▶ defines terms;
 - ▶ clarifies preemption of the field of firearms regulation;
 - ▶ creates the Firearms Preemption Enforcement Act;
 - ▶ outlines exceptions and violations of legislative firearm preemption;
 - ▶ provides for civil action and remedies for a violation of legislative firearm preemption;
 - ▶ addresses governmental immunity; and
 - ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 [53-5a-102](#), as last amended by Laws of Utah 2013, Chapter 278

28 [63G-7-301](#), as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

29 [76-10-500](#), as enacted by Laws of Utah 1999, Chapter 5

30 ENACTS:

31 [78B-6-2301](#), Utah Code Annotated 1953

32 [78B-6-2302](#), Utah Code Annotated 1953

33 [78B-6-2303](#), Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section [53-5a-102](#) is amended to read:

37 **[53-5a-102. Uniform firearm laws.](#)**

38 (1) As used in this section:

39 (a) "Ammunition" means the same as that term is defined in Section [53-5d-102](#).

40 (b) "Dangerous weapon" means the same as that term is defined in Section [76-10-501](#).

41 (c) "Firearm" means:

42 (i) a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled rifle, or a
43 device that could be used as a dangerous weapon from which is expelled a projectile by action
44 of an explosive;

45 (ii) ammunition; and

46 (iii) a firearm accessory.

47 (d) "Firearm accessory" means the same as that term is defined in Section [53-5b-103](#).

48 (e) "Local or state governmental entity" means the same as that term is defined in
49 Section [78B-6-2301](#).

50 (f) "Short barreled shotgun" or "short barreled rifle" means the same as that term is
51 defined in Section [76-10-501](#).

52 (g) "Shotgun" means the same as that term is defined in Section [76-10-501](#).

53 (h) "Venue contractor" means the same as that term is defined in Section [78B-6-2301](#).

54 [(+)] (2) The individual right to keep and bear arms being a constitutionally protected
55 right under Article I, Section 6 of the Utah Constitution and the Second Amendment to the
56 United States Constitution, the Legislature finds the need to provide uniform civil and criminal

57 firearm laws throughout the state and declares that the Legislature occupies the whole field of
58 state regulation of firearms.

59 ~~[(2)]~~ (3) Except as specifically provided by state law, a local [authority] or state
60 governmental entity may not:

61 (a) prohibit an individual from owning, possessing, purchasing, selling, transferring,
62 transporting, or keeping a firearm at the individual's place of residence, property, business, or
63 in any vehicle lawfully in the individual's possession or lawfully under the individual's control;
64 or

65 (b) require an individual to have a permit or license to purchase, own, possess,
66 transport, or keep a firearm.

67 ~~[(3)]~~ (4) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is
68 uniformly applicable throughout this state and in all [its] the state's political subdivisions [and
69 municipalities].

70 ~~[(4) All authority]~~ (5) Authority to regulate firearms is reserved to the state except
71 where the Legislature specifically delegates responsibility to local [authorities] or state
72 governmental entities.

73 ~~[(5)]~~ (6) Unless specifically authorized by the Legislature by statute, a local [authority
74 or state entity] or state governmental entity or a venue contractor may not enact, establish, or
75 enforce any ordinance, regulation, rule, contractual requirement, or policy pertaining to
76 firearms that in any way inhibits or restricts the possession or use of firearms on either public
77 or private property.

78 ~~[(6) As used in this section:]~~

79 ~~[(a) "firearm" has the same meaning as defined in Section 76-10-501; and]~~

80 ~~[(b) "local authority or state entity" includes public school districts, public schools, and~~
81 ~~state institutions of higher education.]~~

82 ~~[(7) Nothing in this section restricts or expands]~~

83 (7) This section does not restrict or expand private property rights.

84 (8) A violation of this section is subject to Title 78B, Chapter 6, Part 23, Firearm
85 Preemption Enforcement Act.

86 Section 2. Section **63G-7-301** is amended to read:

87 **63G-7-301. Waivers of immunity.**

88 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
89 obligation.

90 (b) Actions arising out of contractual rights or obligations are not subject to the
91 requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

92 (c) The Division of Water Resources is not liable for failure to deliver water from a
93 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
94 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
95 condition, or safety condition that causes a deficiency in the amount of available water.

96 (2) Immunity from suit of each governmental entity is waived:

97 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
98 personal property;

99 (b) as to any action brought to foreclose mortgages or other liens on real or personal
100 property, to determine any adverse claim on real or personal property, or to obtain an
101 adjudication about any mortgage or other lien that the governmental entity may have or claim
102 on real or personal property;

103 (c) as to any action based on the negligent destruction, damage, or loss of goods,
104 merchandise, or other property while it is in the possession of any governmental entity or
105 employee, if the property was seized for the purpose of forfeiture under any provision of state
106 law;

107 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of
108 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
109 governmental entity when the governmental entity has taken or damaged private property for
110 public uses without just compensation;

111 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
112 fees under Sections 63G-2-405 and 63G-2-802;

113 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
114 Act;

115 (g) as to any action brought to obtain relief from a land use regulation that imposes a
116 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
117 Land Use Act;

118 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

- 119 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
120 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
121 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
122 or other public improvement;
- 123 (i) subject to Subsections [63G-7-101\(4\)](#) and [63G-7-201\(4\)](#), as to any injury
124 proximately caused by a negligent act or omission of an employee committed within the scope
125 of employment; [~~and~~]
- 126 (j) notwithstanding Subsection [63G-7-101\(4\)](#), as to a claim for an injury resulting from
127 a sexual battery, as provided in Section [76-9-702.1](#), committed:
- 128 (i) against a student of a public elementary or secondary school, including a charter
129 school; and
- 130 (ii) by an employee of a public elementary or secondary school or charter school who:
- 131 (A) at the time of the sexual battery, held a position of special trust, as defined in
132 Section [76-5-404.1](#), with respect to the student;
- 133 (B) is criminally charged in connection with the sexual battery; and
- 134 (C) the public elementary or secondary school or charter school knew or in the exercise
135 of reasonable care should have known, at the time of the employee's hiring, to be a sex
136 offender, as defined in Section [77-41-102](#), required to register under Title 77, Chapter 41, Sex
137 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
138 background check under Section [53G-11-402](#)[~~;~~]; and
- 139 (k) as to any action brought under Section [78B-6-2303](#).
- 140 (3) (a) As used in this Subsection (3):
- 141 (i) "Code of conduct" means a code of conduct that:
- 142 (A) is not less stringent than a model code of conduct, created by the State Board of
143 Education, establishing a professional standard of care for preventing the conduct described in
144 Subsection (3)(a)(i)(D);
- 145 (B) is adopted by the applicable local education governing body;
- 146 (C) regulates behavior of a school employee toward a student; and
- 147 (D) includes a prohibition against any sexual conduct between an employee and a
148 student and against the employee and student sharing any sexually explicit or lewd
149 communication, image, or photograph.

- 150 (ii) "Local education agency" means:
- 151 (A) a school district;
- 152 (B) a charter school; or
- 153 (C) the Utah Schools for the Deaf and the Blind.
- 154 (iii) "Local education governing board" means:
- 155 (A) for a school district, the local school board;
- 156 (B) for a charter school, the charter school governing board; or
- 157 (C) for the Utah Schools for the Deaf and the Blind, the state board.
- 158 (iv) "Public school" means a public elementary or secondary school.
- 159 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
- 160 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
- 161 the term "child" in that section to include an individual under age 18.
- 162 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
- 163 claim against a local education agency for an injury resulting from a sexual battery or sexual
- 164 abuse committed against a student of a public school by a paid employee of the public school
- 165 who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- 166 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
- 167 code of conduct; and
- 168 (ii) before the sexual battery or sexual abuse occurred, the public school had:
- 169 (A) provided training on the code of conduct to the employee; and
- 170 (B) required the employee to sign a statement acknowledging that the employee has
- 171 read and understands the code of conduct.
- 172 (4) (a) As used in this Subsection (4):
- 173 (i) "Higher education institution" means an institution included within the state system
- 174 of higher education under Section 53B-1-102.
- 175 (ii) "Policy governing behavior" means a policy adopted by a higher education
- 176 institution or the Utah Board of Higher Education that:
- 177 (A) establishes a professional standard of care for preventing the conduct described in
- 178 Subsections (4)(a)(ii)(C) and (D);
- 179 (B) regulates behavior of a special trust employee toward a subordinate student;
- 180 (C) includes a prohibition against any sexual conduct between a special trust employee

181 and a subordinate student; and

182 (D) includes a prohibition against a special trust employee and subordinate student
183 sharing any sexually explicit or lewd communication, image, or photograph.

184 (iii) "Sexual battery" means the offense described in Section [76-9-702.1](#).

185 (iv) "Special trust employee" means an employee of a higher education institution who
186 is in a position of special trust, as defined in Section [76-5-404.1](#), with a higher education
187 student.

188 (v) "Subordinate student" means a student:

189 (A) of a higher education institution; and

190 (B) whose educational opportunities could be adversely impacted by a special trust
191 employee.

192 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
193 claim for an injury resulting from a sexual battery committed against a subordinate student by a
194 special trust employee, unless:

195 (i) the institution proves that the special trust employee's behavior that otherwise would
196 constitute a sexual battery was:

197 (A) with a subordinate student who was at least 18 years old at the time of the
198 behavior; and

199 (B) with the student's consent; or

200 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
201 a policy governing behavior; and

202 (B) before the sexual battery occurred, the higher education institution had taken steps
203 to implement and enforce the policy governing behavior.

204 Section 3. Section **76-10-500** is amended to read:

205 **76-10-500. Uniform law.**

206 (1) As used in this section:

207 (a) "Directive" means the same as that term is defined in Section [78B-6-2301](#).

208 (b) "Firearm" means the same as that term is defined in Section [53-5a-102](#).

209 (c) "Local or state governmental entity" means the same as that term is defined in
210 Section [78B-6-2301](#).

211 [(+)] (2) The individual right to keep and bear arms being a constitutionally protected

212 right under Article I, Section 6 of the Utah Constitution and the Second Amendment to the
213 United States Constitution, the Legislature finds the need to provide uniform civil and criminal
214 laws throughout the state and declares that the Legislature occupies the whole field of state
215 regulation of firearms.

216 (3) Except as specifically provided by state law, [~~a citizen of the United States or a~~
217 ~~lawfully admitted alien shall not be~~] a local or state governmental entity may not:

218 (a) [~~prohibited~~] prohibit an individual from owning, possessing, purchasing, selling,
219 transferring, transporting, or keeping any firearm at [~~his~~] the individual's place of residence,
220 property, business, or in any vehicle lawfully in [~~his~~] the individual's possession or lawfully
221 under [~~his~~] the individual's control; or

222 (b) [~~required~~] require an individual to have a permit or license to purchase, own,
223 possess, transport, or keep a firearm.

224 [~~(2)~~] (4) This part is uniformly applicable throughout this state and in all [~~its~~] the state's
225 political subdivisions [~~and municipalities. All authority~~].

226 (5) Authority to regulate firearms [~~shall be~~] is reserved to the state except where the
227 Legislature specifically delegates responsibility to local [~~authorities~~] or state governmental
228 entities.

229 (6) Unless specifically authorized by the Legislature by statute, a local [~~authority~~] or
230 state governmental entity may not enact or enforce [~~any ordinance, regulation, or rule~~] a
231 directive pertaining to firearms that in any way inhibits or restricts the possession or use of
232 firearms on either public or private property.

233 (7) This part does not restrict or expand private property rights.

234 (8) A violation of this section is subject to Title 78B, Chapter 6, Part 23, Firearm
235 Preemption Enforcement Act.

236 Section 4. Section **78B-6-2301** is enacted to read:

237 **Part 23. Firearm Preemption Enforcement Act.**

238 **78B-6-2301. Definitions.**

239 As used in this part:

240 (1) "Directive" means an ordinance, regulation, measure, rule, enactment, order,
241 contractual requirement, or policy issued, enacted, or required by a local or state governmental
242 entity or a venue contractor.

243 (2) "Firearm" means the same as that term is defined in Section 53-5a-102.

244 (3) "Legislative firearm preemption" means the preemption provided for in Sections
245 53-5a-102 and 76-10-500.

246 (4) "Local or state governmental entity" means:

247 (a) a department, commission, board, council, agency, institution, officer, corporation,
248 fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other
249 administrative unit of the state, including the Utah Board of Higher Education, each institution
250 of higher education, and the boards of trustees of each higher education institution; or

251 (b) a county, city, town, metro township, local district, local education agency, public
252 school, school district, charter school, special service district under Title 17D, Chapter 1,
253 Special Service District Act, an entity created by interlocal cooperation agreement under Title
254 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in
255 statute as a political subdivision of the state.

256 (5) "Venue contractor" means a person who contracts with a local or state
257 governmental entity to manage or operate a venue or facility owned by a local or state
258 governmental entity.

259 Section 5. Section **78B-6-2302** is enacted to read:

260 **78B-6-2302. Violation of legislative preemption -- Exceptions.**

261 (1) A local or state governmental entity or a venue contractor may not enact or enforce
262 a directive that violates legislative firearm preemption.

263 (2) This part does not prohibit the enactment or enforcement of a directive:

264 (a) by a law enforcement agency if the directive pertains to a firearm issued to or used
265 by a peace officer in the course of the peace officer's official duties;

266 (b) by a correctional facility or mental health facility under Section 76-8-311.3;

267 (c) of judicial administration if the directive establishes a secure courthouse;

268 (d) by the State Tax Commission if the directive establishes a secure area within a
269 State Tax Commission facility; or

270 (e) by a local or state governmental entity if the directive is developed in response to
271 and in accordance with legislative authority.

272 Section 6. Section **78B-6-2303** is enacted to read:

273 **78B-6-2303. Civil action -- Injunction -- Damages -- Immunity.**

274 (1) A person who is harmed by a local or state governmental entity or a venue
275 contractor that makes or causes to be enforced a directive in violation of legislative firearm
276 preemption may submit a written communication to the local or state governmental entity or
277 the venue contractor that harmed the person asking the local or state governmental entity or the
278 venue contractor that harmed the person to rescind or repeal the directive.

279 (2) (a) If a local or state governmental entity or a venue contractor fails to rescind or
280 repeal a directive within 30 days after the day on which the local or state governmental entity
281 or the venue contractor receives a request described in Subsection (1), the person who
282 submitted the request may file suit against the local or state governmental entity or the venue
283 contractor that failed to rescind or repeal the directive.

284 (b) The suit described in Subsection (2)(a) may be filed in any court of this state having
285 jurisdiction over the local or state governmental entity or the venue contractor that failed to
286 rescind or repeal the directive in accordance with Title 63G, Chapter 7, Governmental
287 Immunity Act of Utah, if applicable.

288 (3) If the court determines that the local or state governmental entity or the venue
289 contractor that failed to rescind or repeal the directive violated legislative firearm preemption,
290 the court shall:

291 (a) order that the relevant directive is void;

292 (b) prohibit the local or state governmental entity or the venue contractor that failed to
293 rescind or repeal the void directive from enforcing the void directive; and

294 (c) award to the prevailing party:

295 (i) actual damages, which includes the cost of time in bringing the civil action or
296 defending against the action;

297 (ii) reasonable attorney fees and costs in accordance with the laws of this state; and

298 (iii) interest on the sums awarded under this Subsection (3) accrued at the legal rate
299 from the date on which the suit is filed.