

Regular Session, 2012

HOUSE BILL NO. 290

BY REPRESENTATIVE HENRY

WEAPONS/FIREARMS: With certain exceptions, reserves regulation of firearms, firearm accessories, and ammunition and related matters to the state and preempts local regulation

1 AN ACT

2 To amend and reenact R.S. 40:1796, relative to regulation of firearms, firearm accessories,
3 and ammunition and related matters; to reserve such regulation to the state, with
4 certain exceptions; to provide for purpose and intent; to provide definitions; to
5 provide exceptions; to provide for enforcement and penalties for violations; to
6 provide for applicability and effectiveness; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1796 is hereby amended and reenacted to read as follows:

9 §1796. Preemption of ~~state law~~ local regulation of firearms, firearm accessories, and
10 ammunition; regulation reserved to state

11 A. ~~No governing authority of a political subdivision shall enact after July 15,~~
12 ~~1985, any ordinance or regulation more restrictive than state law concerning in any~~
13 ~~way the sale, purchase, possession, ownership, transfer, transportation, license, or~~
14 ~~registration of firearms, ammunition, or components of firearms or ammunition;~~
15 ~~however,~~ Purpose and intent. The purpose of this Section is to establish state
16 control over firearms, firearm accessories, and ammunition regulation and policy in
17 order to ensure that such regulation and policy is applied uniformly throughout this
18 state to each person subject to the state's jurisdiction and to ensure protection of the
19 right to keep and bear arms recognized by the Constitution of the United States and

1 the Constitution of Louisiana. This Section shall be liberally construed to effectuate
2 its purposes.

3 B. Definitions. As used in this Section:

4 (1) "Ammunition" means fixed cartridge ammunition, shotgun shells, the
5 individual components of fixed cartridge ammunition and shotgun shells, projectiles
6 for muzzleloading firearms, and any propellant used in firearms or ammunition.

7 (2) "Firearm accessory" means a device specifically adapted to enable the
8 wearing or carrying about one's person, or the storage or mounting in or on a
9 conveyance, of a firearm, magazine, clip, or ammunition, or an attachment or device
10 specifically adapted to be inserted into or affixed onto a firearm to enable, alter, or
11 improve the functioning or capabilities of the firearm.

12 (3) "Firearm" means a pistol, revolver, rifle, shotgun, machine gun,
13 submachine gun, or black powder weapon which is designed to, capable of, or may
14 be readily converted to expel a projectile by the action of an explosive or compressed
15 gas.

16 (4) "Person adversely affected" means a person who meets all of the
17 following criteria:

18 (a) Lawfully resides or is incorporated within the United States.

19 (b) Can legally possess a firearm under the laws of Louisiana.

20 (c) Either of the following:

21 (i) Would be subject to the ordinance, measure, enactment, rule, resolution,
22 motion, or policy at issue if the person were present within the jurisdictional
23 boundaries of the enacting political subdivision, regardless of whether such person
24 works or resides in such political subdivision.

25 (ii) Is a membership organization that includes as a member a person
26 described in Subparagraphs (a) and (b) and Item (i) of this Subparagraph and that is
27 dedicated in whole or in part to protecting the legal or constitutional rights of its
28 members.

1 (5) "Political subdivision" means a parish, municipality, and any other unit
 2 of local government, including a school board and a special district, authorized by
 3 law to perform governmental functions.

4 C. Regulation reserved to state. Except as otherwise provided in this
 5 Section, the regulation of all of the following is hereby declared to be the exclusive
 6 domain of the state:

7 (1) Firearms, firearm accessories, and ammunition.

8 (2) The ownership, possession, use, discharge, carrying, transportation,
 9 registration, transfer, and storage of firearms, firearm accessories, and ammunition.

10 (3) Commerce in and taxation of firearms, firearm accessories, and
 11 ammunition.

12 (4) Any other matter pertaining to firearms, firearm accessories, and
 13 ammunition.

14 D. Regulations in violation void. An ordinance, measure, enactment, rule,
 15 resolution, motion, or policy adopted by a political subdivision, or an official action
 16 including any action taken in any legislative, police power, or proprietary capacity,
 17 taken by an employee or agent of a political subdivision in violation of this Section
 18 is void.

19 E. Exceptions. (1) ~~this~~ This Section shall not apply to the levy and
 20 collection of sales and use taxes, license fees, and taxes and permit fees, nor shall it
 21 affect the authority of political subdivisions to prohibit the possession of a weapon
 22 or firearm in certain ~~commercial establishments~~ and public buildings.

23 ~~B.(2)(a)~~ Nothing in this Section shall prohibit a local governing authority in
 24 a high-risk area from developing a plan with federally licensed firearms
 25 manufacturers, dealers, or importers to secure the inventory of firearms and
 26 ammunition of those licensees in order to prevent looting of the licensee's premises
 27 during a declared state of emergency or disaster. Such plan shall be renewed on a
 28 periodic basis. The information contained in the plan shall be deemed security
 29 procedures as defined in R.S. 44:3.1 and shall be released only to the sheriffs of the

1 parishes or police chiefs of municipalities in which the declared state of emergency
2 or disaster exists.

3 ~~€~~(b) For the purposes of this ~~Section~~ Paragraph:

4 ~~(1)~~(i) "Declared emergency or disaster" means an emergency or disaster
5 declared by the governor or parish president pursuant to the provisions of the
6 Louisiana Homeland Security and Emergency Assistance and Disaster Act.

7 ~~(2)~~(ii) "High-risk area" means the parishes of Assumption, Calcasieu,
8 Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St.
9 Charles, St. James, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa,
10 Terrebonne, and Vermilion.

11 (3) This Section shall not prohibit any of the following:

12 (a) A duly organized law enforcement agency of a political subdivision from
13 promulgating and enforcing rules pertaining to firearms, firearm accessories, or
14 ammunition issued to or used by peace officers in the course of their official duties.

15 (b) Subject to R.S. 32:292.1, an employer from regulating or prohibiting an
16 employee's carrying or possession of firearms, firearm accessories, or ammunition
17 during and in the course of the employee's official duties.

18 (c) A court or administrative law judge from hearing and resolving a case or
19 controversy or issuing an opinion or order on a matter within its jurisdiction.

20 (d) The enactment or enforcement of a generally applicable zoning or
21 business ordinance that includes firearms businesses along with other businesses,
22 provided that an ordinance designed or enforced to effectively restrict or prohibit the
23 sale, purchase, transfer, manufacture, or display of firearms, firearm accessories, or
24 ammunition that is otherwise lawful under the laws of this state is in conflict with
25 this Section and is void.

26 (4) This Section shall not be applicable to and shall not affect the following
27 provisions of law which shall remain in effect: R.S. 14:329.6, R.S. 29:727, 730.3,
28 737, and 738, R.S. 33:120 and 4879, and R.S. 40:1799.

29 F. Violations, penalties, and enforcement. Any political subdivision or
30 employee or agent of a political subdivision that violates this Section by enacting,

1 otherwise making effective, or causing to be enforced any ordinance, measure,
2 enactment, rule, resolution, motion, or policy that regulates firearms, firearms
3 accessories, or ammunition in violation of this Section shall be liable as provided in
4 this Subsection.

5 (1) If a political subdivision violates this Section, the court shall declare the
6 ordinance, measure, enactment, rule, resolution, motion, or policy invalid and issue
7 a permanent injunction against the political subdivision prohibiting it from enforcing
8 such ordinance, measure, enactment, rule, resolution, motion, or policy. It shall be
9 no defense that in enacting, otherwise making effective, or causing the enforcement
10 of the ordinance, measure, enactment, rule, resolution, motion, or policy, the local
11 government was acting in good faith or upon advice of counsel.

12 (2) If the court determines that a violation was knowing and willful, the court
13 shall assess a civil fine of up to five thousand dollars against the local government
14 official or officials or administrative agency head under whose jurisdiction the
15 violation occurred.

16 (3) Except as required by applicable law, public funds may not be used to
17 defend or reimburse the unlawful conduct of any person found to have knowingly
18 and willfully violated this Section.

19 (4) A knowing and willful violation of this Section by a person acting in an
20 official capacity for any entity enacting, making effective, or causing to be enforced
21 an ordinance, measure, enactment, rule, resolution, motion, or policy prohibited by
22 this Section shall be cause for termination of employment or removal from office.

23 (5) A person adversely affected by an ordinance, measure, enactment, rule,
24 resolution, motion, or policy enacted or made effective in violation of this Section
25 may file suit against any political subdivision or other responsible entity in a court
26 of competent jurisdiction for declaratory and injunctive relief and for damages. A
27 court shall award the prevailing plaintiff in any such suit all of the following:

28 (a) Reasonable attorney fees and costs in accordance with the laws of this
29 state.

1 **(b) The greater of actual damages or liquidated damages equal to the amount**
 2 **of three times the attorney fees awarded pursuant to Subparagraph (a) of this**
 3 **Paragraph.**

4 **G. Applicability and effectiveness. On and after August 1, 2012, this**
 5 **Section shall be applicable to any ordinance, measure, enactment, rule, resolution,**
 6 **motion, or policy in violation of this Section whether enacted or made effective by**
 7 **a political subdivision prior to or on or after August 1, 2012, and shall be applicable**
 8 **to any official action, including any action taken in any legislative, police power, or**
 9 **proprietary capacity, taken by an employee or agent of such political subdivision in**
 10 **violation of this Section on or after August 1, 2012. The penalties and remedies**
 11 **provided by Subsection F of this Section shall take effect on November 1, 2012, and**
 12 **political subdivisions shall take all action to comply fully with this Section before**
 13 **that date.**

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)]

Henry

HB No. 290

Abstract: Reserves regulation of firearms, firearm accessories, ammunition, and related matters to the state, with certain exceptions, voids local government regulation in violation, and provides penalties for violations.

Present law prohibits the governing authority of a political subdivision, after July 15, 1985, from enacting any ordinance or regulation more restrictive than state law concerning in any way the sale, purchase, possession, ownership, transfer, transportation, license, or registration of firearms, ammunition, or components of firearms or ammunition.

Proposed law provides instead that (except for specific exceptions - see below) the regulation of all of the following is declared to be the exclusive domain of the state:

- (1) Firearms, firearm accessories, and ammunition.
- (2) The ownership, possession, use, discharge, carrying, transportation, registration, transfer, and storage of firearms, firearm accessories, and ammunition.
- (3) Commerce in and taxation of firearms, firearm accessories, and ammunition.
- (4) Any other matter pertaining to firearms, firearm accessories, and ammunition.

Proposed law (intent) provides that its purpose is to establish state control over firearms, firearm accessories, and ammunition regulation and policy in order to ensure that such

regulation and policy is applied uniformly throughout the state to each person subject to the state's jurisdiction and to ensure protection of the right to keep and bear arms recognized by the U.S. Constitution and the Constitution of La. Provides that it shall be liberally construed to effectuate its purposes.

Proposed law (definitions) defines terms, including "ammunition", "firearm", "firearm accessory", "person adversely affected", and "political subdivision".

Proposed law (regulations in violation void) provides that an ordinance, measure, enactment, rule, resolution, motion, or policy adopted by a political subdivision, or an official action including actions in a legislative, police power, or proprietary capacity, taken by an employee or agent of a political subdivision in violation of proposed law is void.

Present law (exceptions) provides that present law prohibition on ordinance or regulation more restrictive than state law concerning the sale, purchase, possession, ownership, transfer, transportation, license, or registration of firearms, ammunition, or components of firearms or ammunition does not apply to the levy and collection of sales and use taxes, license fees and taxes and permit fees, and shall not affect political subdivisions' authority to prohibit possession of a weapon or firearm in certain commercial establishments and public buildings.

Proposed law applies present law exception to proposed law, but removes exception for political subdivisions to prohibit possession of a weapon or firearm in certain commercial establishments (retains authority for such prohibition in certain public buildings).

Present law provides that it does not prohibit a local governing authority in a high-risk area from developing a plan with federally licensed firearms manufacturers, dealers, or importers to secure licensees' firearms and ammunition inventory in order to prevent looting of licensees' premises during a declared emergency or disaster, with periodic plan renewal.

Proposed law makes present law exception applicable to proposed law.

Proposed law specifies that it shall not prohibit:

- (1) A duly organized law enforcement agency of a political subdivision from promulgating and enforcing rules pertaining to firearms, firearm accessories, or ammunition issued to or used by peace officers in the course of their official duties.
- (2) An employer from regulating or prohibiting an employee's carrying or possession of firearms, firearm accessories, or ammunition during and in the course of the employee's official duties. (Makes this provision subject to R.S. 32:292.1, relative to transportation and storage of firearms in privately owned motor vehicles.)
- (3) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.
- (4) The enactment or enforcement of a generally applicable zoning or business ordinance that includes firearms businesses with other businesses; however, makes void an ordinance designed or enforced to effectively restrict or prohibit the sale, purchase, transfer, manufacture, or display of firearms, firearm accessories, or ammunition.

Present law includes these provisions relative to local government regulation of firearms, firearms accessories, and ammunition:

<u>Citation</u>	<u>Relative to</u>
R.S. 14:329.6	Proclamation of state of emergency, public crisis, disaster, rioting, or similar public emergency. Chief executive of a political subdivision, district judge, district attorney, sheriff, or municipal public safety director may ask the governor to declare emergency. After proclamation chief law enforcement officer may do specified things, including regulating and controlling possession, storage, display, sale, transport, and use of firearms. Does not authorize seizure or confiscation of firearms or ammunition lawfully carried or possessed, but allows a peace officer to disarm a person if necessary to protect the officer or person. Requires return of firearm unless person is arrested or firearm is seized as evidence in a criminal investigation.
R.S. 29:727	Concerns declaration of a state of emergency by the parish president. Also allows a parish president to suspend or limit the sale, dispensing, or transportation of firearms. See R.S. 29:738 below.
R.S. 29:730.3	Deals with authority of a parish president to issue an evacuation order. Also provides for proclaiming a curfew. Provides that a curfew proclamation may regulate and control the possession storage, display, sale, transport, and use of firearms and ammunition. Authority is subject to R.S. 29:738. See below.
R.S. 29:737	Concerns authority of chief executive officer of a municipality to undertake emergency response measures because of a disaster or emergency. Provides that such measures include suspending or limiting the sale, dispensing, or transportation of firearms. See R.S. 29:738 below.
R.S. 29:738	Provides that nothing in the Chapter (R.S. 29:721-739) authorizes the seizure or confiscation of any firearm or ammunition when lawfully carried or possessed, but allows a peace officer to disarm a person when necessary to protect the officer or the person. Requires return of the firearm unless the person is arrested or he seizes the firearm as evidence related to investigation of a crime.
R.S. 33:120	Authorizes parishes to zone in order to prohibit, restrict, or regulate hunting and shooting of firearms in heavily populated areas and set penalties for violations.
R.S. 33:4879	Authorizes the city of New Orleans to institute a firearms buyback program.
R.S. 40:1799	Preempts "the governing authority of any political subdivision or local or other governmental authority of the state" from bringing suit to recover against any firearms or ammunition manufacturer, trade association, or dealer for damages for injury, death, or loss or to seek other injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition. Provides that the authority to bring such actions as may be authorized by law is reserved exclusively to the state. Specifies that the provision does not prohibit "the governing authority of a political subdivision or local or other governing authority of the state" from bringing an action against a firearms or ammunition manufacturer, trade association, or dealer for breach of contract as to firearms or ammunition purchased by the political subdivision or local authority of the state.

Proposed law retains these exceptions and makes them applicable to proposed law.

Proposed law provides that a political subdivision or employee or agent of a political subdivision that violates proposed law by enacting, otherwise making effective, or causing to be enforced any ordinance, measure, enactment, rule, resolution, motion, or policy that regulates firearms, firearms accessories, or ammunition in violation of proposed law shall be liable as follows:

- (1) If a political subdivision violates proposed law, requires the court to declare the ordinance, measure, enactment, rule, resolution, motion, or policy invalid and issue a permanent injunction against the political subdivision prohibiting it from enforcing such ordinance, measure, enactment, rule, resolution, motion, or policy. Provides that it shall be no defense that in enacting, otherwise making effective, or causing the enforcement of the ordinance, measure, enactment, rule, resolution, motion, or policy the local government was acting in good faith or upon advice of counsel.
- (2) For a knowing and willful violation, the court shall assess a civil fine of up to \$5,000 against the local government official(s) or administrative agency head under whose jurisdiction the violation occurred.
- (3) Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person guilty of a knowing and willful violation.
- (4) A knowing and willful violation by a person acting in an official capacity for any entity violating proposed law shall be cause for termination of employment or removal from office.
- (5) A person adversely affected by an ordinance, measure, enactment, rule, resolution, motion, or policy in violation of proposed law may file suit against any political subdivision or other responsible entity for declaratory and injunctive relief and for damages. A person adversely affected includes a person who lawfully resides or is incorporated within the U.S., can legally possess a firearm under the laws of La. and either would be subject to the particular regulation or is a membership organization that includes as a member such a person and that is dedicated in whole or in part to protecting the legal or constitutional rights of its members. Requires that the court award the prevailing plaintiff reasonable attorney fees and costs in accordance with the state law and the greater of actual damages or liquidated damages equal to the amount of three times such attorney fees awarded.

Proposed law is applicable on and after Aug. 1, 2012, to any ordinance, measure, enactment, rule, resolution, motion, or policy in violation of proposed law whether enacted or made effective by a political subdivision prior to or on or after Aug. 1, 2012, and to any official action, including any action taken in any legislative, police power, or proprietary capacity, taken by an employee or agent of such political subdivision in violation of proposed law on or after Aug. 1, 2012. Provides that penalties and remedies provided by proposed law shall take effect on Nov. 1, 2012, and political subdivisions shall take all action to comply fully with proposed law before that date.

(Amends R.S. 40:1796)