

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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HOUSE BILL 705

Short Title: Preemption Affirmation Act. (Public)

Sponsors: Representatives Brody and Ford (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary.

April 11, 2013

A BILL TO BE ENTITLED
AN ACT TO ENSURE STATEWIDE UNIFORMITY OF FIREARMS LAWS.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-409.40 reads as rewritten:

"§ 14-409.40. Statewide uniformity of local regulation.

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(a2) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the Constitution and laws of this State related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of State law or under color of local or State authority.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.



1 (e) A county or municipality may regulate the transport, carrying, or possession of
2 firearms by employees of the local unit of government in the course of their employment with
3 that local unit of government.

4 (f) Nothing contained in this section prohibits municipalities or counties from
5 application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3,
6 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in
7 public-owned buildings, on the grounds or parking areas of those buildings, or in public parks
8 or recreation areas, except nothing in this subsection shall prohibit a person from storing a
9 firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing
10 contained in this section prohibits municipalities or counties from exercising powers provided
11 by law in states of emergency declared under Article 1A of Chapter 166A of the General
12 Statutes.

13 (g) The authority to bring suit and the right to recover against any firearms or
14 ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on
15 behalf of any governmental unit, created by or pursuant to an act of the General Assembly or
16 the Constitution, or any department, agency, or authority thereof, for damages, abatement,
17 injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing,
18 manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved
19 exclusively to the State. Any action brought by the State pursuant to this section shall be
20 brought by the Attorney General on behalf of the State. This section shall not prohibit a
21 political subdivision or local governmental unit from bringing an action against a firearms or
22 ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach
23 of contract or warranty for defect of materials or workmanship as to firearms or ammunition
24 purchased by the political subdivision or local governmental unit.

25 (h) Prohibitions; Penalties. –

26 (1) Any person, county, agency, municipality, district, or other entity that
27 violates the General Assembly's occupation of the whole field of regulation
28 of firearms and ammunition, as declared in subsection (a) of this section, by
29 enacting or causing to be enforced any local ordinance or administrative rule
30 or regulation impinging upon such exclusive occupation of the field shall be
31 liable as set forth herein.

32 (2) If any person, county, agency, municipality, district, or other entity violates
33 this section, the court shall declare the improper ordinance, regulation, or
34 rule invalid and shall issue a permanent injunction against the local
35 government or other entity prohibiting it from enforcing the ordinance,
36 regulation, or rule. It is no defense that in enacting the ordinance, regulation,
37 or rule, the local government or other entity was acting in good faith or upon
38 advice of counsel.

39 (3) If the court determines that a violation was knowing and willful, the court
40 shall assess a civil fine of up to five thousand dollars (\$5,000) against the
41 elected or appointed local government official or officials or head of any
42 other governmental entity under whose jurisdiction the violation occurred.

43 (4) Except as required by applicable law, public funds may not be used to
44 defend or reimburse the unlawful conduct of any person found to have
45 knowingly and willfully violated this section.

46 (5) A knowing and willful violation of this section by a person acting in an
47 official capacity for any entity enacting or causing to be enforced a local
48 ordinance or administrative rule or regulation prohibited under subsection
49 (a) of this section or otherwise under color of law shall be cause for
50 termination of employment or contract, or for removal from office by the
51 Governor.

- 1 (6) A person or an organization whose membership is adversely affected by any
2 ordinance, regulation, measure, directive, rule, enactment, order, or policy
3 promulgated or caused to be enforced in violation of this section may file
4 suit against any county, agency, municipality, district, or other entity in any
5 court of this State having jurisdiction over any defendant to the suit for
6 declaratory and injunctive relief and for actual damages, as limited herein,
7 caused by the violation. A court shall award the prevailing plaintiff in any
8 such suit:
- 9 a. Reasonable attorneys' fees and costs in accordance with the laws of
10 this State, including a contingency fee multiplier as authorized by
11 law.
- 12 b. The actual damages incurred, but not more than one hundred
13 thousand dollars (\$100,000).
- 14 c. Punitive damages in the amount of not less than five thousand dollars
15 (\$5,000) and not more than one hundred thousand dollars (\$100,000)
16 per violation.
- 17 d. Interest on the sums awarded pursuant to this subsection shall accrue
18 at the legal rate from the date on which suit was filed."

19 **SECTION 2.** This act becomes effective December 1, 2013.