

BILL ANALYSIS

Senate Research Center

H.B. 3231
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1987, the legislature passed a firearms regulation preemption statute, so the law regarding selling, owning, carrying, and storing firearms would be uniform throughout the state and Texans could be assured that the law was the same everywhere.

Nevertheless, some local governments have tried to use local ordinances and code enforcement to override state law and place their own restrictions on firearms sales and possession in violation of state law.

H.B. 3231 would prohibit municipalities and counties from regulating commerce in firearms, air guns, knives, or ammunition. Moreover, the bill would clarify that the current law's prohibition on regulating the transfer, transportation, licensing, or registration of firearms includes possession, carrying, or storage.

The bill clarifies that local governments can regulate carrying by license holders in prohibited locations listed in Sections 46.03 and 46.035 (particularly courts and offices of courts and government meetings), and regulate carrying by their own employees while on duty, but may not violate the state's employee parking lot law.

While current law allows the Texas attorney general to file suit against a municipality that violates adversely affected abridged by a local government to file suit to recover actual damages, attorney's fees and injunctive relief.

The state's preemption statute for counties was enacted in 2011. While it is similar to the preemption law for cities, the language did not track exactly. H.B. 3231 harmonizes the language.

H.B. 3231 amends current law relating to the regulation of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories by a county or municipality.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 229.001, Local Government Code, by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (b-1), (d-1), (h), and (i), as follows:

(a) Prohibits a municipality, notwithstanding any other law, including Section 43.002 (Continuation of Land Use) of this code and Chapter 251 (Effect of Nuisance Actions and Governmental Requirements on Preexisting Agricultural Operations), Agriculture Code, from adopting regulations relating to:

(1) the transfer, possession, wearing, carrying, ownership, storage, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories, rather than the transfer, private ownership,

keeping, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies;

(2) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or

(3) creates this subdivision from existing text and makes no further changes.

(a-1) Provides that an ordinance, resolution, rule, or policy adopted or enforced by a municipality, or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee or agent of a municipality in violation of this section (Firearms; Air Guns; Knives; Explosives) is void.

(b) Provides that Subsection (a) does not affect the authority a municipality has under another law to:

(1)–(2) makes no changes to these subdivisions;

(3) except as provided by Subsection (b-1), adopt or enforce a generally applicable zoning ordinance, land use regulation, fire code, or business ordinance, rather than regulate the use of property, the location of a business, or uses at a business under the municipality's fire code, zoning ordinance, or land-use regulations as long as the code, ordinance, or regulations are not used to circumvent the intent of Subsection (a) or Subdivision (5) of this subsection;

(4)–(6) makes no changes to these subdivisions;

(7) regulate the carrying of a firearm by a person licensed to carry a handgun under Subchapter H (License to Carry a Handgun), Chapter 411, Government Code, in accordance with Section 411.209 (Wrongful Exclusion of Handgun License Holder), Government Code;

(8) creates this subdivision from existing text and makes a nonsubstantive change;

(9) redesignates existing text of Subdivision (8) as Subdivision (9) and makes a nonsubstantive change; or

(10) except as provided by Subsection (d-1), regulate or prohibit an employee's carrying or possession of a firearm, firearm accessory, or ammunition in the course of the employee's official duties.

(b-1) Makes conforming changes. Provides that the exception provided by Subsection (b)(3) does not apply if the ordinance or regulation is designed or enforced to effectively restrict or prohibit the manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition that is otherwise lawful in this state.

(d) Provides that the exception provided by Subsection (b)(4) does not authorize the seizure or confiscation of any firearm, air gun, knife, ammunition, or firearm or air gun supplies or accessories from an individual who is lawfully carrying or possessing the firearm, air gun, knife, ammunition, or firearm or air gun supplies or accessories.

(d-1) Provides that the exception provided by Subsection (b)(10) does not authorize a municipality to regulate an employee's carrying or possession of a firearm in violation of Subchapter G (Restrictions on Prohibiting Employee Transportation or Storage of Certain Firearms or Ammunition), Chapter 52, Labor Code.

(e) Defines "ammunition" and "firearm or air gun accessory" for purposes of this section. Creates Subdivision (4) from existing text. Redesignates existing text of Subdivision (3) as Subdivision (5).

(h) Authorizes a person adversely affected by a violation of this section to file suit against the municipality in an appropriate court. Requires the court to award to a plaintiff who prevails:

- (1) actual damages;
- (2) equitable relief as determined by the court to be necessary, including declarative or injunctive relief; and
- (3) reasonable expenses, including attorney's fees, court costs, and expert witness fees.

(i) Provides that this section does not limit the enforceability of any state or federal law.

SECTION 2. Amends Section 236.001(1), Local Government Code, to provide that "air gun," "ammunition," and "firearm or air gun accessory" have the meanings assigned by Section 229.001.

SECTION 3. Amends Section 236.002, Local Government Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (a-4), as follows:

(a) Prohibits a county, notwithstanding any other law, including Chapter 251, Agriculture Code, from adopting or enforcing, rather than adopting, regulations relating to:

- (1) makes conforming changes to this subdivision;
- (2) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or
- (3) creates this subdivision from existing text and makes no further changes.

(a-1) Provides that an ordinance, rule, resolution, or policy adopted or enforced by a county, or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee or agent of a county in violation of this section is void.

(a-2) Provides that Subsection (a) does not affect the authority of a county to:

- (1) require a resident or public employee to be armed for personal or national defense, law enforcement, or other purpose under other law;
- (2) regulate the discharge of firearms or air guns in accordance with Section 235.022 (Authority to Regulate);
- (3) regulate the carrying of a firearm by a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, in accordance with Section 411.209, Government Code;
- (4) except as provided by Subsection (a-3), adopt or enforce a generally applicable land use regulation, fire code, or business regulation; or
- (5) except as provided by Subsection (a-4), regulate or prohibit an employee's carrying or possession of a firearm, firearm accessory, or ammunition in the course of the employee's official duties.

(a-3) Provides that a county order or regulation designed or enforced to effectively restrict or prohibit the manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition that is otherwise lawful in this state is void.

(a-4) Provides that Subsection (a-2)(5) does not authorize a county to regulate an employee's carrying or possession of a firearm in violation of Subchapter G, Chapter 52, Labor Code.

SECTION 4. Amends Chapter 236, Local Government Code, by adding Section 236.004, as follows:

Sec. 236.004. CIVIL REMEDY. (a) Authorizes a person adversely affected by a violation of this chapter to file suit against the county in an appropriate court.

(b) Requires the court to award to a plaintiff who prevails:

(1) actual damages;

(2) equitable relief as determined by the court to be necessary, including declarative or injunctive relief; and

(3) reasonable expenses, including attorney's fees, court costs, and expert witness fees.

SECTION 5. Effective date: September 1, 2019.