

- SUBJECT:** Unlawful seizure of a firearm by a governmental officer or employee
- COMMITTEE:** Federalism and Fiscal Responsibility, Select — favorable, without amendment
- VOTE:** 4 ayes — Creighton, Burkett, Lucio, Scott Turner
1 nay — Walle
- WITNESSES:** For — (*Registered, but did not testify:* Ian Armstrong; Judith Fox; Tommy Gage, Montgomery County Sherriff's Office; Joann Galich; Bob Green; Ded Hebert; Chris Howe; Ryan Lambert, Marlene Parlak; Tim Parlak; Marissa Patton, Texas and Southwestern Cattle Raisers Association; Robert Ritchey; Michelle Smith; Alice Trip, Texas State Rifle Association; Terri Williams, Texas Motorcycle Rights Association)

Against — (*registered, but did not testify:* Jimmy Rodriguez, San Antonio Police Officers Association; Charley Wilkison, Combined Law Enforcement Association of Texas)

On — (*Registered, but did not testify:* Tom Glass, Libertarian Party of Texas)
- DIGEST:** HB 1314 would make it a class A (up to one year in jail and/or a maximum fine of \$4,000) for an employee of the United States, Texas, or a subdivision of Texas — under color of the person's office or employment — to knowingly seize a firearm that is permitted or required by a federal statute, order, rule, or regulation that imposes a prohibition or regulation that does not exist under Texas law.

The bill would define a person who acted under color of the person's office or employment s one who acted or purported to act in an official capacity or took advantage of that actual or purported capacity.

The bill would allow an exception if a person's seizure of a firearm was consistent with an explicit and applicable grant of federal statutory authority that was consistent with the U.S. Constitution.

The prosecution could negate the existence of the exception by proving,

based on a U.S. Supreme Court decision, that the federal order, rule, or regulation used to seize a firearm was not within the scope of federal powers conferred by the U.S. Constitution.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 1314 would ensure that Texans' rights guaranteed in the second amendment of the U.S. constitution were protected from unlawful firearm seizure under "color of law."

Such a seizure has been deemed unconstitutional by the U.S. Supreme Court. According to the FBI, it is a federal crime for anyone acting under "color of law" to willfully deprive a person of the right protected by the Constitution or U.S. law. During 2012, 42 percent of the FBI's total civil rights caseload involved color of law issues, with "deprivation of property" one of the top five categories.

HB 1314 would not create a dispute between state and federal authority, but would act as the final backstop against agents of the federal or state government that exceeded constitutional authority and violated the rights of Texas citizens. Given the Legislature's short biennial session, it is essential to address the possibility that federal decrees could be passed during the interim that could be struck down in the interim by the U.S. Supreme Court.

**OPPONENTS
SAY:**

HB 1314 could criminalize police officers acting to fulfill their jobs to the best of their knowledge. Police officers should not be caught in the middle of federal and state firearm laws.

Moreover, HB 1314 is not necessary because it is already illegal to enforce a law that the U.S. Supreme Court has judged to be unconstitutional. The bill would merely signal Texas' unwillingness to constructively address the serious issue of enforcing federal and state gun laws while also protecting citizens' rights.