

SUBJECT: Updating, enforcing pre-emption statutes on firearms and other items

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 6 ayes — Nevárez, Paul, Burns, Clardy, Lang, Tinderholt

2 nays — Goodwin, Israel

1 absent — Calanni

WITNESSES: For — Tara Mica, National Rifle Association; Rick Briscoe, CJ Grisham, and John Swicegood, Open Carry Texas; Michael Cargill, Texans for Accountable Government, Log Cabin Republicans; Bradley Hodges; Eric Schafer; (*Registered, but did not testify*: Elysse Brenner, Empowered 2A; Angela Smith, Fredericksburg Tea Party; Rachel Malone, Gun Owners of America; Justin Delosh and Amos Postell, Lone Star Gun Rights; James Dickey, Republican Party of Texas; Walter West II (RET), Republican Party of Texas, Texas Senate District 4, and Veterans; Terry Holcomb, Texas Carry; Alice Tripp, Texas State Rifle Association; Jason Vaughn, Texas Young Republicans; Stephanie Franklin, The Liberty Project of Texas; and 51 individuals)

Against — Elva Mendoza, Moms Demand Action for Gun Sense in America; Gyl Switzer, Texas Gun Sense; (*Registered, but did not testify*: Jo DePrang, Children's Defense Fund-Texas; Clifford Sparks, City of Dallas; Bill Kelly, City of Houston Mayor's Office; Christopher Lutton, City of San Antonio; Elizabeth Crosby, Melanie Greene, Christine Hinkle, Melissa Holmes, Miste Hower, Laura Legett, Cristina Legrand, Dana Mielke, Vonnie Neufeld, Jennifer Price, Nora Redfern, Hilary Whitfield, and Jennifer Zoghby, Moms Demand Action for Gun Sense in America; Chris Frandsen, Texas League Of Women Voters; Holly Hayes; Tom Henry; Janet Janssen; Maria Person)

BACKGROUND: Local Government Code sec. 229.001(a) and sec. 236.002(a) prohibit a municipality or county, respectively, from regulating the transfer, private ownership, keeping, transportation, licensing, or registration of firearms,

air guns, knives, ammunition, or firearm or air gun supplies.

Under sec. 229.001(b), the prohibition under sec. 229.001(a) does not affect the authority a municipality has under another law to regulate or require certain activities related to firearms, air guns, ammunition and supplies, and other weapons.

DIGEST:

HB 3231 would revise existing pre-emption statutes relating to municipality and county regulatory authority of firearms, air guns, knives, ammunition, or firearm or air gun supplies. The bill also would establish a civil remedy for a person adversely affected by a municipality's or county's violation of certain limitations on authority.

Prohibition on regulations. HB 3231 would add the possession or carrying of or commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies and accessories to the list of activities a municipality or county was prohibited from regulating under Local Government Code sec. 229.001(a) or sec. 236.002(a), respectively.

The bill would make void an ordinance, resolution, rule, or policy adopted or enforced by a municipality or county or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee of a municipality or county in violation of Local Government Code sec. 229.001(a) or sec. 236.002(a).

Municipal authority. Under the bill, the prohibition under Local Government Code sec. 229.001(a) would not affect the authority a municipality had under other law to regulate the carrying of a firearm by a person licensed to carry a handgun.

A municipality's authority to adopt or enforce a generally applicable zoning ordinance, land use regulation, fire code, or business ordinance would not be affected unless the ordinance or regulation was designed or enforced to effectively restrict or prohibit the lawful manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition.

HB 3231 would not affect a municipality's authority to regulate or prohibit an employee's carrying or possession of a firearm, accessory, or ammunition in the course of official duties, except that such a regulation could not violate current law relating to employee transportation or storage of certain firearms or ammunition.

The bill would specify that a municipality's authority to regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster to protect public health and safety would not authorize the seizure of firearm or air gun supplies or accessories from an individual lawfully carrying or possessing them.

County authority. The bill would except from the prohibition on county regulations under Local Government Code sec. 236.002(a) a county's authority to:

- require a resident or public employee to be armed for personal or national defense, law enforcement, or other purpose under law;
- regulate the discharge of firearms or air guns on lots that were 10 acres or smaller and located in the unincorporated area of the county in a subdivision;
- regulate the carrying of a firearm by a person licensed to carry a handgun;
- adopt or enforce a generally applicable land use regulation, fire code, or business regulation; or
- regulate or prohibit an employee's carrying or possession of a firearm, accessory, or ammunition in the course of official duties, except that such a regulation could not violate current law relating to employee transportation or storage of certain firearms or ammunition.

A county order or regulation designed or enforced to effectively restrict or prohibit the lawful manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition would be void.

Civil remedy. A person adversely affected by a municipality or county in violation of the bill could file suit against the municipality or county. The court would have to award a plaintiff who prevailed actual damages, equitable relief as determined by the court, and reasonable expenses, including attorney's fees, court costs, and expert witness fees.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

HB 3231 would ensure more uniform treatment of firearms and ammunition across the state. By updating existing firearms pre-emption statutes and applying provisions that currently affect cities to counties, the bill would protect the rights of lawful gun owners and firearm retailers.

The bill would not affect a city's or county's legitimate authority to regulate the discharge of firearms or create and enforce other related ordinances. The civil penalties under the bill would provide entities the incentive to comply with state law, ensuring authority was not misused and that pre-emption laws were enforced consistently throughout the state. To avoid the penalties, the bill simply would require a city or county to refrain from adopting a regulation intended to restrict gun owners and businesses from engaging in lawful activities. In a suit, plaintiffs still would have to meet their burden of proof and convince the court and jury that it would be appropriate to award damages or other requested relief.

**OPPONENTS
SAY:**

HB 3231 could have a chilling effect on a city's or county's authority to adopt ordinances and regulations related to firearms, air guns, knives, ammunition, or firearm or air gun supplies and accessories. The bill would allow people to challenge ordinances or regulations that effectively restrict gun rights. This vague standard would invite litigation and expand liability for cities and counties, which would be costly for local taxpayers. In effect, cities and counties likely would choose not to pass any regulations that could affect firearms in any way, even if explicitly authorized by law, for fear of legal liability.