

SUBJECT: Creating the Texas Firearm Protection Act

COMMITTEE: Federalism and Fiscal Responsibility, Select — favorable, without amendment

VOTE: 3 ayes — Creighton, Burkett, Scott Turner

1 nay — Walle

1 absent — Lucio

WITNESSES: For — Michael Atkins, Montgomery County Constable Pct 3; Michelle Byerly, 1 Million Moms Against Gun Control; David Carter; Nancy Crecelius; Warren Diepraam, Montgomery Country DAO; Tommy Gage, Montgomery County Sherriff's Office; Tom Glass, Libertarian Party of Texas; Doris Goleman; Kenneth Hayden, Montgomery County Constable Pct 4; Ryan Lambert; Mario Loyola, Texas Public Policy Foundation; Tammy McRae; James Metts, Justice of the Peace Pct 4; Lynn O'Sullivan, and William O'Sullivan, Texas Patriots PAC; Michelle Prescott, Texan Gun Rights; (*Registered, but did not testify:* Ian Armstrong; Jeremy Blosser, Tarrant County Republican Party; Daniel Earnest, San Antonio Police Officers Association; Judith Fox; Joann Galich; Bob Green; Jennifer Hall, Tarrant County Republican Party; Dede Hebert; Chris Howe; Brandon Moore; Washington Moscoso, San Antonio Police Officer's Association; Susan Nawojski; Marlene Parlak; Tim Parlak; Mariss Patton, Texas and Southwestern Cattle Raisers Association; Robert Ritchey; Michelle Smith; Pat Tibbs; Alice Tripp, Texas State Rifle Association; Terri Williams, Texas Motorcycle Rights Association)

Against — (*Registered, but did not testify:* Charley Wilkinson, Combined Law Enforcement Associations of Texas)

BACKGROUND: Penal Code, sec. 46.01 defines a firearm as any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

DIGEST: HB 1076 would prohibit any state entity or employee of a state entity from adopting a rule, order, ordinance, or policy under which it enforced or

allowed the enforcement of a federal statute or regulation on firearms or firearm accessories, such as a capacity limitation or registration requirement, that did not exist under current state law.

Any agency that violated these prohibitions would not be allowed to receive state grant funds for the fiscal year in which a final judgment determined that there was a violation.

HB 1076 would allow any citizen under the geographic jurisdiction of a state entity to file a complaint, along with evidence, with the attorney general if an entity enforced a federal law prohibited by the bill.

If the attorney general determined a complaint was valid, the attorney general could file a petition for a writ of mandamus or other equitable relief in the appropriate district court to compel the entity to comply with the bill's provisions.

Appeals of a suit brought by the attorney general would be governed under the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The court would render a final judgment with the least possible delay.

HB 1076 would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for an officer or person acting under the authority of a state entity to knowingly enforce a federal statute, order, rule, or regulation that violated current Texas law.

The bill would apply to:

- the state of Texas, including an agency, department, commission, bureau, board, office, council, court or other branch of state government created by the Texas Constitution or statute, including a university system or system of higher education;
- the governing body of a municipality, county, or special district or authority;
- an officer, employee or other body that was part of a municipality, county, or special district, including a sheriff, municipal police department, municipal attorney, or county attorney; and
- a district attorney or criminal district attorney.

The bill would define a firearms accessory as an item used in conjunction with or mounted on a firearm but that was not essential to the basic

function of the firearm, including a detachable magazine.

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 1076 would protect Texans' rights under the second amendment of the U.S. Constitution, protect Texas' state and local law enforcement officers from violating the U.S. Constitution, and prevent the federal government from targeting certain firearms and accessories with restrictions.

Texans have the constitutionally protected right to bear arms, but it is possible that a U.S. president could issue an executive order or Congress could pass a bill that violated that right. HB 1076 would send a strong message to the federal government that Texans would not stand idly by while their basic freedom was violated and would empower citizens to report violations to the state's attorney general.

The bill would protect state and local law enforcement from having to enforce a law that was unconstitutional. Police officers already have plenty of challenges without being coopted to enforce federal regulations of dubious legality and possibly violate their oath to uphold the law.

The bill would protect the state from the federal government's attempt to make certain styles of rifles or higher capacity magazines illegal. Limiting the type of firearm that a citizen may own would limit that person's freedom and right to self-protection.

**OPPONENTS
SAY:**

HB 1076 would be unconstitutional, ineffectual, and violate the basic legal concept of federal law supremacy. The attempt to nullify federal law with state law would ultimately not stand up under scrutiny and would therefore not have any legal authority. Passing the bill would amount to symbolic gesturing and would not be a constructive way to find a sensible and legal balance between federal and state gun laws.

HB 1076 also could put rank-and-file police officers in the middle of the contentious debate over federal authority and states' rights with regard to gun regulation. The bill would create confusion regarding which laws to enforce and could end up creating a situation in which Texas police officers would be in violation of the law while honestly attempting to enforce it. The penalty for violating Texas law could ultimately lead to

disciplinary action or termination. Passing HB 1076 would not be the right way to address the question of whether Texas would have to enforce a federal law its citizens did not like.