

- SUBJECT:** Local government entities' non-enforcement of federal firearm laws
- COMMITTEE:** Federalism and Fiscal Responsibility, Select — committee substitute recommended
- VOTE:** 3 ayes — Creighton, Burkett, Scott Turner
- 1 nay — Walle
- 1 absent — Lucio
- WITNESSES:** For — Jeremy Blosser, Tarrant County Republican Party; Tom Glass, Libertarian Party of Texas; Mont Goodell; John Harrington; Read King; Ryan Lambert; Mario Loyola, Texas Public Policy Foundation; Rachel Malone, Texas Firearms Freedom; (*Registered, but did not testify*: Ian Armstrong; Judith Fox; Joann Galich; Bob Green; Paul Hastings; John Horton, Young Conservatives of Texas; Chris Howe; Brandon Moore; Marlene Parlak; Tim Parlak; Marissa Patton, Texas and Southwestern Cattle Raisers Association; Slow Pokey, Trailerparkshow.com; Robert Ritchey; Michelle Smith; Alice Tripp, Texas State Rifle Association; Terri Williams, Texas Motorcycle Rights Association)
- Against — (*Registered, but did not testify*: Charley Wilkison, Combined Law Enforcement Associations of Texas)
- DIGEST:** CSHB 928 would prohibit a state agency or political subdivision from providing assistance to federal officials in the enforcement of federal laws or rules regulating firearms or items related to firearms. The prohibition would apply when the federal restriction was not also in state law.
- A political subdivision of the state that required the enforcement of a federal restriction on firearms not also in state law would be prevented from receiving state grant funds. This restriction on grant funds would occur in the fiscal year following the year in which a final judicial determination under this law was made.
- A citizen living within a political subdivision following a federal restriction could file a complaint with the attorney general and would have to include evidence supporting the claim. The attorney general could then

seek enforcement of this Penal Code section in Travis County district court or in the county of the political subdivision in question. Attorney fees and costs for enforcing this section could be recovered.

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:

CSHB 928 would reflect a new cooperative framework between state and federal government. Where the laws converge, the state law enforcement would continue to use its resources to assist federal law enforcement. But where state law did not mirror federal law, it would be up to the federal government to enforce those laws. There are other areas where there is room for this relationship, whether the issue is firearms restrictions or something else. Texas should lead on this issue and be the first state to enact a law like this.

What the bill proposes is constitutional and comes directly from U.S. Supreme Court precedent. In *Prince v. United States*, the Supreme Court considered a case where the federal government was trying to force firearm background checks with federal regulations upon the states. *Prince* established the constitutional framework that the federal government cannot force the state to do something but can incent the state or use other means. In line with this ruling, state officials should not be required to enforce a policy not in line with the preferences of its residents.

As an enforcement mechanism, the bill would provide penalties if political subdivisions sought to require enforcement of a federal gun restriction. In dealing with this Second Amendment issue, there would be no attempt to subject police officers to criminal penalties. Rather, the bill's enforcement provision would be for local government entities to lose state grant monies for the next year.

The bill would not create confusion for police officers in Texas. It only would apply if a political subdivision were to require its rank and file officers to enforce a federal firearm restriction not in line with state law.

Additionally, HB 928 addresses state resources regarding state conduct. It would say nothing about federal law. The bill would only assert that where state and federal law do not agree, state law would instruct state law enforcement resources. Federal agencies would continue to conduct their

own operations as the federal government instructed them.

OPPONENTS  
SAY:

HB 928 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 about 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 this bill would not be the right way to address the question of whether Texas would have to enforce a federal law its residents did not like.

The bill is unconstitutional, ineffectual, and violates the basic legal concept of 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 simply would be symbolic gesturing and not a constructive way to find a sensible and legal balance between federal and state gun laws.

NOTES:

A similar bill, HB 1076 by Toth, is on today's House General State Calendar.