

By: Otto

H.B. No. 553

A BILL TO BE ENTITLED

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AN ACT

relating to firearms and the preservation of the Second Amendment to the United States Constitution; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SECTION 1. (a) This Act shall be known as the "Second Amendment Preservation Act."

(b) The Legislature of the State of Texas hereby finds:

(1) Article IV, Clause 2 of the United States Constitution provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land."

(2) The Kentucky Resolutions of 1798, and 1799 -- that State's official response and opposition to the federal government's Alien & Sedition Acts, which criminalized speech critical of the federal government in a clear violation of the First Amendment -- were authored by Thomas Jefferson, and provide in part:

Resolved, That the several states composing the United States of America, are not united on the principle of unlimited submission to their general government; but that by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain

1 definite powers, reserving, each state to itself the
2 residuary mass of right to their own self-government;
3 and that whensoever the general government assumes
4 undelegated powers, its acts are unauthoritative,
5 void, and of no force: That to this compact each state
6 acceded as a state, and is an integral party, its
7 co-states forming as to itself, the other party: That
8 the government created by this compact was not made the
9 exclusive or final judge of the extent of the powers
10 delegated to itself; since that would have made its
11 discretion, and not the Constitution, the measure of
12 its powers; but that, as in all other cases of compact
13 among parties having no common judge, each party has an
14 equal right to judge for itself, as well of
15 infractions, as of the mode and measure of redress.

16 (1798)

17 That the principle and construction contended by
18 sundry of the state legislatures, that the general
19 government is the exclusive judge of the extent of the
20 powers delegated to it, stop nothing short of
21 despotism, since the discretion of those who
22 administer the government, and not the Constitution,
23 would be the measure of their powers: That the several
24 states who formed that instrument being sovereign and
25 independent, have the unquestionable right to judge of
26 its infraction, and that a nullification by those
27 sovereignties, of all unauthorized acts done under

1 color of that instrument, is the rightful remedy.

2 (1799)

3 (3) The Tenth Amendment to the United States
4 Constitution provides: "The powers not delegated to the United
5 States by the Constitution, nor prohibited by it to the States, are
6 reserved to the States respectively, or to the people."

7 (4) The Ninth Amendment to the United States
8 Constitution provides: "The enumeration in the Constitution, of
9 certain rights, shall not be construed to deny or disparage others
10 retained by the people."

11 (5) The Second Amendment to the United States
12 Constitution provides: "A well-regulated militia being necessary
13 to the security of a free state, the right of the people to keep and
14 bear arms shall not be infringed."

15 (6) That all federal acts, laws, executive orders,
16 agency orders, and rules or regulations of all kinds with the
17 purpose, intent, or effect of confiscating any firearm, banning any
18 firearm, limiting the size of a magazine for any firearm, imposing
19 any limit on the ammunition that may be purchased for any firearm,
20 taxing any firearm or ammunition therefore, or requiring the
21 registration of any firearm or ammunition therefore, infringes upon
22 Texan's right to bear arms in direct violation of the Second
23 Amendment to the Constitution of the United States, and therefore,
24 any such law is not made in pursuance of the Constitution, is not
25 authorized by the Constitution, and thus, is not the supreme law of
26 the land, and consequently, is invalid in this State and shall be
27 further considered null and void and of no effect in this State.

1 SECTION 2. Chapter 46, Penal Code, is amended by adding
2 Section 46.16 to read as follows:

3 Sec. 46.16. Second Amendment Shall Remain Inviolable;
4 Offences; Penalties.

5 (a) A person who is a Peace Officer, State Officer, or State
6 Employee commits an offense if the person, while acting under color
7 of the person's office or employment, intentionally enforces or
8 attempts to enforce any acts, laws, executive orders, agency
9 orders, rules or regulations of any kind whatsoever of the United
10 States government relating to confiscating any firearm, banning any
11 firearm, limiting the size of a magazine for any firearm, imposing
12 any limit on the ammunition that may be purchased for any firearm,
13 taxing any firearm or ammunition therefore, or requiring the
14 registration of any firearm or ammunition therefore.

15 (b) A person who is a public servant commits an offense if
16 the person, while acting under color of the person's office or
17 employment, intentionally enforces or attempts to enforce any acts,
18 laws, executive orders, agency orders, rules or regulations of any
19 kind whatsoever of the United States government relating to
20 confiscating any firearm, banning any firearm, limiting the size
21 of a magazine for any firearm, imposing any limit on the ammunition
22 that may be purchased for any firearm, taxing any firearm or
23 ammunition therefore, or requiring the registration of any firearm
24 or ammunition therefore.

25 (c) For purposes of Subsections (a) and (b):

26 (1) "Firearm" is defined at Penal Code §46.01; "Peace
27 Officer" is defined at Government Code §614.001; and "State

1 Officer" and "State Employee" are defined at Government Code
2 §572.002.

3 (2) "Public servant," includes an officer, employee,
4 or agent of the United States; a branch, department, or agency of
5 the United States; another person acting under a contract with a
6 branch, department, or agency of the United States to provide a law
7 enforcement or security service; or any other person acting under
8 color of federal law.

9 (3) A person acts under color of the person's office
10 or employment if the person acts or purports to act in an official
11 capacity or takes advantage of such actual or purported capacity.

12 (4) It is a defense to prosecution for an offense
13 under Subsection (b) that the person performed the act consistent
14 with an explicit and applicable grant of federal statutory
15 authority that is consistent with the United States Constitution.

16 (d) An offense under Subsection (a) is a Class B
17 misdemeanor punishable by confinement for a term not to exceed 180
18 days, a fine of not more than \$5,000, or both the confinement and
19 the fine.

20 (e) An offense under Subsection (b) is a Class A misdemeanor
21 punishable by confinement for a term not to exceed one year, a fine
22 of not more than \$10,000, or both the confinement and the fine.

23 SECTION 3. (a) This section applies only to a prosecution
24 of an offense under Section 46.16 Penal Code, as added by this Act,
25 in which the defendant was, at the time of the alleged offense,
26 acting under the color of federal law.

27 (b) If the government of the United States, the defendant,

1 or any other party challenges the validity of Section 46.16, Penal
2 Code, as added by this Act, on any grounds including
3 unconstitutionality, preemption, or sovereign immunity, the
4 Attorney General of Texas with the consent of the appropriate local
5 county or district attorney, as necessary, shall take any and all
6 actions required on behalf of the State to defend the validity of
7 the statute.

8 SECTION 4. This Act shall be construed, as a matter of
9 state law, to be enforceable up to but no further than the maximum
10 possible extent consistent with federal constitutional
11 requirements, even if that construction is not readily apparent,
12 as such constructions are authorized only to the extent necessary
13 to save the statute from judicial invalidation.

14 SECTION 5. Every provision in this Act and every
15 application of the provisions in this Act are severable from each
16 other as a matter of state law. If any application of any provision
17 in this Act to any person or group of persons or circumstances is
18 found by a court to be invalid, the remainder of this Act and the
19 application of the Act's provisions to all other persons and
20 circumstances may not be affected. All constitutionally valid
21 applications of this Act shall be severed from any applications
22 that a court finds to be invalid, leaving the valid applications in
23 force, because it is the legislature's intent and priority that the
24 valid applications be allowed to stand alone. Even if a reviewing
25 court finds a provision of this Act invalid in a large or
26 substantial fraction of relevant cases, the remaining valid
27 applications shall be severed and allowed to remain in force.

1 SECTION 6. REPORT. The Texas Department of Public Safety
2 shall immediately report to the governor, attorney general, and the
3 legislature any attempt by the federal government to implement or
4 enforce any law in violation of this Act through the Texas
5 Department of Public Safety, or any another state or local law
6 enforcement agency.

7 SECTION 7. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2013.