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Bill Analysis

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Primary Sponsors: Reps. Loychik and Schmidt

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SUMMARY

- Enacts the Ohio Second Amendment Preservation Act.
- Removes several provisions of Ohio's Weapons Control Law that reference federal firearms laws.
- Excludes firearm braces and stabilizing devices from laws governing sawed-off firearms and dangerous ordnance.
- Specifies certain federal acts, laws, executive orders, administrative orders, rules, and regulations must be considered infringements on the people's right to keep and bear arms.
- Specifies an infringement is invalid to Ohio, must not be recognized by Ohio, must be specifically rejected by Ohio, and must not be enforced by Ohio.
- Specifies it is the duty of the courts and law enforcement agencies of Ohio to protect the rights of law-abiding citizens to keep and bear arms within Ohio's borders and to protect these rights from infringements.
- Prohibits a law enforcement officer from having the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms.
- Subjects the state or a political subdivision who employs a law enforcement officer who knowingly violates the bill's provisions, or who otherwise knowingly deprives an Ohio citizen of the right to keep and bear arms, while acting under the color of any state or federal law, to liability to the injured party in an action at law, suit in equity, or other proper proceeding for redress, and to a \$50,000 penalty per occurrence.
- Subjects the state or a political subdivision to a \$50,000 penalty for each employee that the state or political subdivision knowingly employs who is acting as or previously acted as a federal official, agent, employee, or deputy who knowingly enforced, attempted to

enforce, or gave material aid or support to others in an attempt to enforce any infringement after the bill's effective date.

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DETAILED ANALYSIS

Braces and stabilizing devices

The bill makes several changes to Ohio's Weapons Control Law (WCL)¹ regarding braces and stabilizing devices. First, the bill includes in the definition of "handgun," for purposes of the WCL, any firearm with an affixed brace, stabilizing device, arm brace, or pistol brace. The bill also specifically excludes handguns (including braces as added by the bill) from the definition of "sawed-off firearm." And finally, the bill excludes any firearm with an affixed brace, stabilizing device, arm brace, or pistol brace from the definition of "dangerous ordnance" for purposes of the WCL. These changes eliminate the possibility that a firearm with an affixed brace, stabilizing device, arm brace, or pistol brace might be considered a sawed-off firearm or dangerous ordnance, subject to regulation under existing state law.²

References to federal law

The bill eliminates various exceptions and clarifications in the WCL that utilize reference to federal firearms laws. Specifically, the bill eliminates the following:³

- In the definition of "sawed-off firearm," a reference to firearms with an overall length of at least 26 inches approved for sale by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) under the Gun Control Act of 1968,⁴ but found not to be

¹ R.C. 2923.11 to 2923.25, not in the bill except for R.C. 2923.11, 2923.111, 2923.122, and 2923.17.

² R.C. 2923.11(C)(2), (F), and (L)(7).

³ R.C. 2923.11(F), (L)(6), repealed and (L)(7) (renumbered (L)(6)); R.C. 2923.111(A)(2) and (C)(2); 2923.122(D)(3)(c); and 2923.17(C)(3) through (6).

⁴ 82 Stat. 1213, 18 United States Code (U.S.C.) 921(a)(3).

regulated under the National Firearms Act.⁵ Eliminating the references to both the federal Gun Control Act of 1968 and the federal National Firearms Act instead excludes from the definition of “sawed-off firearm” every firearm with an overall length of at least 26 inches approved for sale by the ATF.

- An exclusion from the definition of “dangerous ordnance” for any device not expressly excepted from the definition of a destructive device pursuant to the federal Gun Control Act of 1968⁶ and regulations issued under that Act.
- In the definition of “dangerous ordnance,” a reference to firearms with an overall length of at least 26 inches approved for sale by the ATF under the Gun Control Act of 1968,⁷ but found not to be regulated under the National Firearms Act.⁸ Eliminating the references to both the federal Gun Control Act of 1968 and the federal National Firearms Act instead excludes from the definition of “dangerous ordnance” every firearm with an overall length of at least 26 inches approved for sale by the ATF.
- With respect to concealed handgun licensing and authority and the right to carry a concealed handgun, the reference to persons prohibited from carrying a firearm under federal law.⁹ With the federal reference eliminated, a person is only subject to automatic revocation of concealed handgun rights and authority if the person has a firearms disability under Ohio law.
- A requirement, to be excluded from the prohibition on carrying firearms into a school safety zone, that the person be in the school safety zone in accordance with federal law.¹⁰
- In the prohibition against possession of dangerous ordnance, references to federal laws governing the licensure of importers, manufacturers, and dealers in destructive devices or their ammunition;¹¹ governing the sale, loan, or conveyance of surplus ordnance by the Secretary of the Army;¹² and governing the registration of dangerous ordnance owners in the National Firearms Registration and Transfer Record.¹³
- A requirement that a person engaged in the business of transporting or storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual

⁵ 68A Stat. 725 (1934), 26 U.S.C. 5845(a).

⁶ 82 Stat. 1213, 18 U.S.C. 921(a)(4).

⁷ 82 Stat. 1213, 18 U.S.C. 921(a)(3).

⁸ 68A Stat. 725 (1934), 26 U.S.C. 5845(a).

⁹ 18 U.S.C. 922(g)(1) to (9).

¹⁰ 18 U.S.C. 922 (q)(2)(B).

¹¹ 82 Stat. 1213, 18 U.S.C. 923.

¹² 70A Stat. 262 and 263, 10 U.S.C. 4684, 4685, and 4686.

¹³ 82 Stat. 1229, 26 U.S.C. 5841.

course of their business, comply with “applicable federal laws” to be excluded from the prohibition against possession of dangerous ordnance under Ohio law.

Second Amendment Preservation Act

Findings and declarations

The bill names its provisions the Second Amendment Preservation Act, and contains the following findings and declarations of the General Assembly:¹⁴

The General Assembly of the state of Ohio is firmly resolved to support and defend the Constitution of the United States against every aggression, whether foreign or domestic, and is duty-bound to oppose every infraction of those principles that constitute the basis of the union of the states because only a faithful observance of those principles can secure the union’s existence and the public happiness.

Acting through the Constitution of the United States, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving for the state governments the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs.

The limitation of the federal government’s power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal powers as being those which have been delegated by the people of the several states to the federal government, and all powers not delegated to the federal government in the Constitution of the United States are reserved to the states respectively or the people themselves.

If the federal government assumes powers that the people did not grant it in the Constitution of the United States, its acts are unauthoritative, void, and of no force.

The several states of the United States respect the proper role of the federal government but reject the proposition that such respect requires unlimited submission.

If the federal government, created by a compact among the states, were the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution of the

¹⁴ R.C. 2923.50(B) and Section 3.

United States, the federal government's discretion, and not the Constitution of the United States, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge for itself as to whether infractions of the compact have occurred, as well as to determine the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made under the powers granted in the Constitution of the United States, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions that collect data or restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Ohio; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating the United States armed forces or for organizing, arming, and disciplining militia forces actively employed in the service of the United States armed forces.

The people of the several states have given Congress the power "to regulate commerce with foreign nations, and among the several states," but "regulating commerce" does not include the power to limit citizens' right to keep and bear arms in defense of their families, neighbors, persons, or property nor to dictate what sort of arms and accessories law-abiding Ohioans may buy, sell, exchange, or otherwise possess within the borders of this state.

The people of the several states also have granted Congress the power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States" and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution of the United States in the government of the United States, or in any department or office thereof." These constitutional provisions merely identify the means by which the federal government may execute its limited powers and shall not be construed to grant unlimited power because to do so would be to destroy the carefully constructed equilibrium between the federal and state governments. Consequently, the General Assembly rejects any claim that the

taxing and spending powers of Congress may be used to diminish in any way the right of the people to keep and bear arms.

The General Assembly of the state of Ohio finds that the federal excise tax rate on arms and ammunition in effect before January 1, 2021, which funds programs under the Wildlife Restoration Act, does not have a chilling effect on the purchase or ownership of such arms and ammunition.

The people of Ohio have vested the General Assembly with the authority to regulate the manufacture, possession, exchange, and use of firearms within the borders of this state, subject only to the limits imposed by the Second Amendment to the United States Constitution and the Constitution of Ohio.

The General Assembly of the state of Ohio strongly promotes responsible gun ownership, including parental supervision of minors in the proper use, storage, and ownership of all firearms; the prompt reporting of stolen firearms; and the proper enforcement of all state gun laws. The General Assembly of the state of Ohio hereby condemns any unlawful transfer of firearms and the use of any firearm in any criminal or unlawful activity.

Infringements

The bill specifies that the following federal acts, laws, executive orders, administrative orders, rules, and regulations must be considered infringements on the people's right to keep and bear arms guaranteed by the Second Amendment to the U.S. Constitution and Section 4 of Article I, Ohio Constitution within Ohio's borders:¹⁵

- Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens;
- Any registration or tracking of firearms, firearm accessories, or ammunition;
- Any registration or tracking of the owners of firearms, firearm accessories, or ammunition;
- Any act forbidding the possession, ownership, or use or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens;
- Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

¹⁵ R.C. 2923.50(C).

The bill specifies that all federal acts, laws, executive orders, administrative orders, rules, and regulations, whether enacted before or after the enactment of the bill's provisions, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the U.S. Constitution and Section 4 of Article I, Ohio Constitution are invalid to Ohio, must not be recognized by Ohio, must be specifically rejected by Ohio, and must not be enforced by Ohio.

The bill makes it the duty of the courts and law enforcement agencies of Ohio to protect the rights of law-abiding citizens to keep and bear arms within Ohio's borders and to protect these rights from the infringements set forth under the bill, listed above.¹⁶

The bill prohibits a law enforcement officer from having the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms, as set forth under the bill, listed above.¹⁷

The bill notwithstanding any contrary provision in Ohio's Court of Claims Law¹⁸ and Political Subdivision Tort Liability Law¹⁹ in order to make the state or a political subdivision that employs a law enforcement officer who knowingly violates the Second Amendment Preservation (SAP) provisions of the bill,²⁰ or otherwise knowingly deprives an Ohio citizen of the rights or privileges ensured by the Second Amendment to the U.S. Constitution or Section 4 of Article I, Ohio Constitution, while acting under the color of any state or federal law, liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress, and subject to a \$50,000 penalty per occurrence. The bill also provides an injured party standing to pursue an action for injunctive relief in the court of common pleas of the county in which the action allegedly occurred or in the Franklin County Court of Common Pleas with respect to the actions of such an officer. The court must hold a hearing on the motion for temporary restraining order and preliminary injunction within 30 days of service of the petition. Under the bill, the court may award the prevailing party, other than the state of Ohio or any political subdivision of Ohio, reasonable attorney's fees and costs, notwithstanding anything to the contrary in Ohio's Court of Claims Law and Political Subdivision Tort Liability Law.²¹

Law enforcement officers

The bill also subjects the state or a political subdivision to a \$50,000 penalty for each employee that the state or political subdivision knowingly employs who is acting as or previously acted as an official, agent, employee, or deputy of the U.S. government, or otherwise

¹⁶ R.C. 2923.50(D) and (E).

¹⁷ R.C. 2923.50(F)(1).

¹⁸ R.C. Chapter 2743.

¹⁹ R.C. Chapter 2744.

²⁰ R.C. 2923.50.

²¹ R.C. 2923.50(F)(2) and (3).

acting under the color of federal law within the borders of Ohio, who knowingly does either of the following after the effective date of the bill:²²

- Enforces or attempts to enforce any of the infringements set forth in the SAP portion of the bill, listed above;
- Gives material aid or support to the efforts of another who enforces or attempts to enforce any of the infringements set forth in the SAP portion of the bill, listed above.

The bill gives standing to any person residing or conducting business in the state or a political subdivision of the state who believes that a law enforcement officer of the state or a political subdivision of the state has taken action prohibited under “**Infringements**,” above, to pursue an action for injunctive relief in the court of common pleas of the county in which the action allegedly occurred, or in the Franklin County Court of Common Pleas, with respect to actions of such law enforcement officers. The court must hold a hearing on the motion for temporary restraining order and preliminary injunction within 30 days of service of the petition. In such actions, the court may award the prevailing party, other than the state of Ohio or any political subdivision of the state, reasonable attorney’s fees and costs. The bill specifies that sovereign immunity is not an affirmative defense in such actions.²³

Nothing in the SAP portion of the bill is to be construed to prohibit public officers or employees of the state or a political subdivision of the state from accepting aid from federal officials in an effort to enforce laws of the state or of a political subdivision.

Providing material aid to federal officials who are in pursuit of a suspect when there is a demonstrable criminal nexus with another state or country and such suspect is either not a citizen of this state or is not present in this state is not to be considered a violation of this SAP portion of the bill.²⁴

Likewise, it is not to be considered a violation of the SAP portion of the bill to provide material aid to federal prosecutions for either of the following:²⁵

- Felony crimes against a person when such prosecution includes weapons violations substantially similar to those found in Ohio’s Theft and Fraud Law²⁶ or Ohio’s WCL, so long as the weapons violations are merely ancillary to such prosecution.
- Class A or class B felony violations, as designated under federal law, substantially similar to those found in Ohio’s Drug Offenses Law²⁷ when the prosecution includes weapons

²² R.C. 2923.50(G)(1).

²³ R.C. 2923.50(G)(2).

²⁴ R.C. 2923.50(H) and (I).

²⁵ R.C. 2923.50(J).

²⁶ R.C. Chapter 2913.

²⁷ R.C. Chapter 2925.

violations substantially similar to those found in Ohio's Theft and Fraud Law or Ohio's WCL, so long as such weapons violations are merely ancillary to such prosecution.

Severability

The bill specifies that if any provision of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.²⁸

Definitions

For purposes of the SAP portion of the bill:²⁹

"Law-abiding citizen" means a person who is not otherwise precluded under state law from possessing a firearm and must not be construed to include anyone who is not legally present in the U.S. or Ohio.

"Law enforcement officer" means an individual who is employed, commissioned, disposed, appointed, or elected in one of the following capacities for Ohio, a political subdivision of Ohio, or an agency, department, or instrumentality of Ohio or a political subdivision of Ohio:

- A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority, or state highway patrol trooper;
- An officer, agent, or employee of Ohio or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;
- A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;
- A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;
- A person lawfully called pursuant to the Sheriff's Law to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;
- A person appointed by a mayor pursuant to Municipal Public Safety Law as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

²⁸ R.C. 2923.50(K), by reference to R.C. 1.50, not in the bill.

²⁹ R.C. 2923.50(A).

- A member of the Ohio organized militia or the U.S. armed forces, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
- A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;
- A veterans' home police officer;
- A member of a police force employed by a regional transit authority;
- A special police officer employed by a port authority;
- The House of Representatives Sergeant-at-arms if the House of Representatives Sergeant-at-arms has arrest authority law and an assistant House of Representatives Sergeant at arms;
- The Senate Sergeant-at-arms and an assistant Senate Sergeant-at-arms;
- A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the U.S. Department of Transportation;
- A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract;
- A state university law enforcement officer;
- An enforcement agent of the Department of Public Safety;
- An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
- An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer;
- A forest-fire investigator appointed by the Chief of the Division of Forestry;
- A natural resources officer appointed by the Director of Natural Resources;
- A wildlife officer designated by the Chief of the Division of Wildlife;
- An individual designated to perform law enforcement duties for townships park districts, park districts, or conservancy districts;
- An officer or employee of the Bureau of Criminal Identification and Investigation who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer;

- A state fire marshal law enforcement officer;
- Any person who is employed in Ohio, who is authorized to carry firearms, and who is subject to and in compliance with the requirements of the firearms requalification program.

“**Material aid or support**” includes voluntarily giving or allowing others to make use of lodging, communications equipment or services including social media accounts, facilities, weapons, personnel, transportation, clothing, or other physical assets. “Material aid or support” does not include giving or allowing the use of medicine or other materials necessary to treat physical injuries, nor include any assistance provided to help persons escape a serious, present risk of life-threatening injury.

“**Political subdivision**” means a county, township, municipal corporation, or any other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

“**Public office**” includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

“**Public officer**” includes all officers, employees, or duly authorized representatives or agents of a public office.

Emergency clause

The bill is declared to be an emergency measure, necessary for the immediate preservation of the public peace, health, and safety, and will go into immediate effect. The stated reason for the emergency is that immediate action is necessary to ensure the limitation of the federal government’s power and to protect the citizens’ right to bear arms.³⁰

COMMENT

The Supremacy Clause of the U.S. Constitution specifies that the U.S. Constitution and federal laws generally take precedence over state laws.³¹ The provisions of the bill that nullify federal acts, laws, executive orders, administrative orders, rules, and regulations; prohibit the enforcement of those federal matters within Ohio; and eliminate any immunity that might exist under federal law, may be vulnerable to challenge under the Supremacy Clause.

The Kansas Second Amendment Protection Act (SAPA)³² was discussed in *United States v. Cox*.³³ Shane Cox and Jeremy Kettler were prosecuted under the National Firearms Act for selling and purchasing unregistered firearms and unregistered silencers. They argued the

³⁰ Section 3.

³¹ U.S. Constitution, Article IV, Paragraph 2.

³² Kansas Annotated Statutes § 50-1201 to § 50-1211.

³³ 906 F.3d 1170 (Tenth Circuit, 2018).

Kansas SAPA shielded them from being prosecuted under federal law. The court did not agree. The court stated that, although “Cox and Kettler . . . have been prosecuted for conduct that, based on a state statute’s assurances, they believed was lawful . . . allowing state legislatures to estop the federal government from prosecuting its laws would upset the balance of powers between states and the federal government and contravene the Supremacy Clause.”³⁴ The court did not address the constitutionality of Kansas’ SAPA. The U.S. Supreme Court declined to review the case.³⁵

HISTORY

Action	Date
Introduced	02-15-23

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³⁴ *United States v. Cox*, at 1192.

³⁵ *Cox v. United States*, 2019 U.S. LEXIS 3931 (U.S., June 10, 2019).