



# Ohio Legislative Service Commission

## Bill Analysis

Daniel M. DeSantis

### H.B. 35

131st General Assembly  
(As Introduced)

**Reps.** Retherford and Hood, Brenner, Zeltwanger, Thompson, Vitale, Becker, Maag, Kraus, Buchy, T. Johnson

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## BILL SUMMARY

- Prohibits any agency and its employees and agents from seizing or authorizing the seizure of any firearm from a person lawfully in possession or control of the firearm, except when a law enforcement officer acting in the lawful discharge of the officer's duties (1) reasonably believes the immediate seizure of the firearm is necessary for the safety of the officer or another individual, or (2) seizes the firearm to preserve it as evidence, or for the investigation, of a criminal offense.
- Requires the law enforcement officer to return to the person a firearm that was seized under (1), above, if the person is not arrested; the firearm is not seized to preserve the firearm as evidence, or for the investigation, of a criminal offense; and the reason for the firearm's seizure no longer exists.
- Prohibits state and federal law enforcement officers, international agents, or other persons from enforcing or attempting to enforce a firearm registration requirement or firearm ban imposed by law, unless the requirement or ban is in effect before the bill's effective date, and imposes a first degree felony for violation of the prohibition.
- Prohibits a political subdivision from enacting or adopting an ordinance, a resolution, or a rule that requires a person to register a firearm or establishes a firearm registry.

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## CONTENT AND OPERATION

### Seizure of a firearm

The bill prohibits an agency, or employee or agent of an agency, from seizing or authorizing the seizure of any firearm from any person who is lawfully in possession or

control of a firearm, except in the case of a law enforcement officer who is acting in the lawful discharge of the officer's duties under either of the following circumstances:

(1) The firearm is in the possession, or under the control, of any person and the law enforcement officer reasonably believes the immediate seizure of the firearm is necessary for the safety of the law enforcement officer or another individual; or

(2) The seizure of the firearm is necessary to preserve the firearm as evidence, or for the investigation, of a criminal offense.

Under (1), above, the law enforcement officer must return the firearm to the person from whom it was seized if the person is not arrested, the firearm is not seized as evidence, or for the investigation, of a criminal offense, and the reason for the seizure of the firearm no longer exists.<sup>1</sup>

For purposes of the bill, an "agency" is any administrative or operational division, including an office, department, bureau, board, commission, or authority, of the state or of a political subdivision thereof, including volunteer agencies, organizations, or departments.<sup>2</sup> And a "firearm" is any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, including an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.<sup>3</sup>

### **Enforcing a firearm registration requirement or firearm ban law**

The bill prohibits a law enforcement officer, a federal law enforcement officer, an international agent, or other person from enforcing or attempting to enforce a firearm registration requirement or firearm ban in any statute or rule of Ohio or the United States, or any ordinance, resolution, or rule of a political subdivision, unless the registration requirement or ban is in effect before the bill's effective date. Violating this prohibition is unlawful enforcement of a firearm registration requirement or firearm ban, a first degree felony.<sup>4</sup> This provision of the bill implicates several constitutional principles, which are discussed in **COMMENT 1**, below.

The bill also prohibits a township that adopts a limited home rule form of government, a municipal corporation, or a county (collectively, "political subdivision")

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<sup>1</sup> R.C. 5502.23.

<sup>2</sup> R.C. 5502.21, not in the bill.

<sup>3</sup> R.C. 5502.23(C) and 2329.11, not in the bill.

<sup>4</sup> R.C. 5502.231(A) and (C).



from enacting or adopting any ordinance, resolution, or rule that requires a person to register a firearm or establishes a firearm registry.<sup>5</sup> This provision also implicates a constitutional principle, as is discussed in **COMMENT 2**, below.

Under the bill, a "firearm" has the same definition as above, and a "firearm ban" means any ban or prohibition on a person's possession of a firearm that is not based on the status or condition of the person or limited to the possession of a firearm in a school safety zone, courthouse, or other designated location.<sup>6</sup> Also under the bill, a "federal law enforcement officer" means an employee of the United States who serves in a position the duties of which are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.<sup>7</sup>

### **Definition of "law enforcement officer"**

For purposes of the entire bill, continuing law broadly defines "law enforcement officer" as including numerous types of local, state, and federal officers, for example, police officers, sheriffs, Ohio's organized militia, and the Armed Forces of the United States, to name a few.<sup>8</sup>

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## **COMMENT**

1. It is doubtful whether the General Assembly can ban federal or state law enforcement officers, or international agents,<sup>9</sup> from enforcing or attempting to enforce a federal law requiring firearm registration or banning firearms, if one were enacted by Congress after the bill is enacted. The U.S. Constitution's Supremacy Clause makes the Constitution, and federal laws validly enacted in pursuance of it, the "supreme law of the land."<sup>10</sup> Federal laws bind the states, notwithstanding anything in their constitutions or laws. Under U.S. Supreme Court decisions<sup>11</sup> interpreting the Supremacy Clause, acts of

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<sup>5</sup> R.C. 5502.231(B) and (D), and 2921.421, not in the bill.

<sup>6</sup> R.C. 5502.231(D).

<sup>7</sup> R.C. 5502.231(D), and 2921.51, not in the bill.

<sup>8</sup> R.C. 2901.01, not in the bill.

<sup>9</sup> The General Assembly has no jurisdiction over federal law enforcement officers and international agents.

<sup>10</sup> U.S. Const., Article VI, clause 2.

<sup>11</sup> For example, *Perez v. Campbell*, 402 U.S. 637 (1971); *Edgar v. Mite Corp.*, 457 U.S. 624 (1982); *Gonzales v. Raich*, 545 U.S. 1 (2005); *Arizona v. United States*, 567 U.S. \_\_\_\_, 132 S.Ct. 2492, 2012 U.S. LEXIS 4872 (2012).



state legislatures that interfere with, or are contrary to, laws of Congress, are found invalid.

The scope of firearm laws that Congress may enact appears to be limited by the Second Amendment.<sup>12</sup> Recent U.S. Supreme Court decisions suggest that universal firearm bans are questionable under the Second Amendment, but categorical firearms bans, for example, those that disable certain classes of individuals, such as violent offenders, from having firearms, may be acceptable.<sup>13</sup> In other words, case law seems to allow laws that regulate or restrict, but do not ban, gun possession or ownership, or that ban gun possession or ownership by certain categories of, but not all, people. This tends to suggest that Congress could not successfully enact a universal firearm ban, but could enact firearm bans affecting certain categories of people.

Any federal firearms law that survives Second Amendment scrutiny would have to be enforced by federal and state law enforcement officers, which leads to another problem—the bill's statement that its non-enforcement provision applies to only the non-enforcement of *future* firearm bans or firearm registration requirements. This provision ultimately may be ineffective because, under the Ohio Constitution, one general assembly cannot bind future general assemblies.<sup>14</sup> Moreover, the non-enforcement provision, by threatening a criminal penalty, compels law enforcement officers to suspend enforcement of future firearm bans and registration requirements, contrary to the principle that later enactments of law are understood to supersede earlier conflicting laws. However, only the General Assembly, not law enforcement officers, can suspend state law.<sup>15</sup>

2. The provision of the bill prohibiting certain political subdivisions from enacting laws that require a person to register a firearm or to establish a firearm registry is questionable because it might interfere with municipal corporations' police power, which is a home rule power granted by the Ohio Constitution.<sup>16</sup> Firearm control is almost certainly an example of police power. Although the General Assembly can enact laws that supersede a conflicting municipal police ordinance, it can do so only by enacting "general laws," i.e., laws that are comprehensive in nature, operate uniformly throughout the state, and do not merely grant or limit the legislative authority of a municipality. A general law must prescribe a mode of conduct as part of a comprehensive enactment. It is uncertain whether the bill's prohibition is such a "general law."

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<sup>12</sup> The Second Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

<sup>13</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 3025 (2010).

<sup>14</sup> Ohio Const., Art. II, secs. 1 and 15(A).

<sup>15</sup> Ohio Const., Art. I, sec. 18.

<sup>16</sup> Ohio Const., Art. XVIII, sec. 3.



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## HISTORY

ACTION

DATE

Introduced

02-03-15

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