

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 189

Short Title: Second Amendment Preservation Act. (Public)

Sponsors: Representatives Kidwell, Hanig, Goodwin, and Adams (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 3, if favorable, Rules, Calendar, and Operations of the House

March 2, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SECOND AMENDMENT PRESERVATION ACT.

3 Whereas, the General Assembly is firmly resolved to support and defend the
4 Constitution of the United States against every aggression, whether foreign or domestic, and is
5 duty bound to oppose every infraction of those principles that constitute the basis of the union of
6 the states because only a faithful observance of those principles can secure the union's existence
7 and the public happiness; and

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

12 Whereas, the limitation of the federal government's power is affirmed under
13 Amendment X of the Constitution of the United States, which defines the total scope of federal
14 powers as being those which have been delegated by the people of the several states to the federal
15 government, and all powers not delegated to the federal government in the Constitution of the
16 United States are reserved to the states respectively or the people themselves; and

17 Whereas, if the federal government assumes powers that the people did not grant it in
18 the Constitution of the United States, its acts are unauthoritative, void, and of no force; and

19 Whereas, the several states of the United States respect the proper role of the federal
20 government but reject the proposition that such respect requires unlimited submission. If the
21 federal government, created by a compact among the states, were the exclusive or final judge of
22 the extent of the powers granted to it by the states through the Constitution of the United States,
23 the federal government's discretion, and not the Constitution of the United States, would
24 necessarily become the measure of those powers. To the contrary, as in all other cases of
25 compacts among powers having no common judge, each party has an equal right to judge for
26 itself as to whether infractions of the compact have occurred, as well as to determine the mode
27 and measure of redress. Although the several states have granted authority to laws and treaties
28 made under the powers granted in the Constitution of the United States, such authority does not
29 extend to various federal statutes, executive orders, administrative orders, court orders, rules,
30 regulations, or other actions that (i) collect data or restrict or prohibit the manufacture, ownership,
31 or use of firearms, firearm accessories, or ammunition exclusively within this State, and (ii) do
32 not substantially affect the interstate market for firearms, firearm accessories, or ammunition;
33 such statutes, executive orders, administrative orders, court orders, rules, regulations, and other
34 actions exceed the powers granted to the federal government except to the extent they are
35 necessary and proper for governing and regulating the United States Armed Forces or for



1 organizing, arming, and disciplining militia forces actively employed in the service of the United
2 States Armed Forces; and

3 Whereas, the people of the several states have given Congress the power "to regulate
4 commerce with foreign nations, and among the several states," but "regulating commerce" does
5 not include the power to limit citizens' right to keep and bear arms in defense of their families,
6 neighbors, persons, or property nor to dictate what sorts of arms and accessories law-abiding
7 citizens of this State may buy, sell, exchange, or otherwise possess within this State; and

8 Whereas, the people of the several states have also granted Congress the powers "to
9 lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common
10 defense and general welfare of the United States" and "to make all laws which shall be necessary
11 and proper for carrying into execution the powers vested by the Constitution of the United States
12 in the government of the United States, or in any department or office thereof." These
13 constitutional provisions merely identify the means by which the federal government may
14 execute its limited powers and shall not be construed to grant unlimited power because to do so
15 would be to destroy the carefully constructed equilibrium between the federal and state
16 governments. Consequently, the General Assembly rejects any claim that the taxing and spending
17 powers of Congress may be used to diminish in any way the right of the people to keep and bear
18 arms; and

19 Whereas, the people of this State have vested the General Assembly with the authority
20 to regulate the manufacture, possession, exchange, and use of firearms within the borders of this
21 State, subject only to the limits imposed by Amendment II of the Constitution of the United States
22 and Section 30 of Article I of the North Carolina Constitution; and

23 Whereas, the General Assembly strongly promotes responsible gun ownership,
24 including parental supervision of minors in the proper use, storage, and ownership of all firearms,
25 and the proper enforcement of all State gun laws. The General Assembly hereby condemns any
26 unlawful transfer of firearms and the use of any firearm in any criminal or unlawful activity;
27 Now, therefore,

28 The General Assembly of North Carolina enacts:

29 **SECTION 1.** This act shall be known as the "Second Amendment Preservation Act."

30 **SECTION 2.** Article 53B of Chapter 14 of the General Statutes is amended by adding
31 a new section to read:

32 **§ 14-409.44. Prohibition on enforcing certain federal firearms regulations.**

33 (a) Prohibition. – Notwithstanding any provision of law to the contrary, the following
34 federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations
35 shall be considered infringements on the people's right to keep and bear arms, as guaranteed by
36 Amendment II of the Constitution of the United States and Section 30 of Article I of the North
37 Carolina Constitution, within the borders of this State:

38 (1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or
39 ammunition not common to all other goods and services and that might
40 reasonably be expected to encroach on or impair the right of law-abiding
41 citizens to purchase or own those items.

42 (2) Any registering or tracking of firearms, firearm accessories, or ammunition
43 that might reasonably be expected to encroach on or impair the right of
44 law-abiding citizens to purchase or own those items.

45 (3) Any registration or tracking of the owners of firearms, firearm accessories, or
46 ammunition that might reasonably be expected to encroach on or impair the
47 right of law-abiding citizens to purchase or own those items.

48 (4) Any act forbidding the possession, ownership, use, or transfer of a firearm,
49 firearm accessory, or ammunition by law-abiding citizens.

50 (5) Any act ordering the confiscation of firearms, firearm accessories, or
51 ammunition from law-abiding citizens.

1 **(b) Retroactive Application.** – All federal acts, laws, executive orders, administrative
2 orders, court orders, rules, and regulations, whether enacted before or after the provisions of this
3 section, that infringe on the people's right to keep and bear arms as guaranteed by Amendment II
4 of the Constitution of the United States and Section 30 of Article I of the North Carolina
5 Constitution shall be invalid in this State, shall not be recognized by this State, shall be
6 specifically rejected by this State, and shall be considered null, void, and of no effect in this State.

7 **(c) Duty to Protect.** – It shall be the duty of the courts and law enforcement agencies of
8 this State to protect the rights of law-abiding citizens to keep and bear arms within the borders
9 of this State and to protect these rights from the infringements set forth in subsection (a) of this
10 section.

11 **(d) Authority to Enforce Prohibited Acts.** – No entity or person, including any public
12 officer or employee of this State or any political subdivision of this State, shall have the authority
13 to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders,
14 court orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear
15 arms as guaranteed by Amendment II of the Constitution of the United States and Section 30 of
16 Article I of the North Carolina Constitution.

17 **(e) Liability.** – Any entity or person who knowingly violates the provisions of subsection
18 (d) of this section, or otherwise knowingly deprives a citizen of this State of the rights or
19 privileges ensured by Amendment II of the Constitution of the United States or Section 30 of
20 Article I of the North Carolina Constitution while acting under the color of any state or federal
21 law shall be liable to the injured party in an action at law, suit in equity, or other proper
22 proceeding for redress.

23 **(f) Damages.** – In any action brought under subsection (e) of this section, the court may
24 award the prevailing party, other than the State or any political subdivision of the State,
25 reasonable attorneys' fees and costs.

26 **(g) Immunity.** – Sovereign, official, or qualified immunity shall not be an affirmative
27 defense in any action brought under subsection (e) of this section.

28 **(h) Definition.** – For purposes of this section, the term "law-abiding citizen" means a
29 person who is not otherwise precluded under State law from possessing a firearm and shall not
30 be construed to include anyone who is not legally present in the United States or this State."

31 **SECTION 3.** If any provision of this act or its application is held invalid, the
32 invalidity does not affect other provisions or applications of this act that can be given effect
33 without the invalid provisions or application, and to this end the provisions of this act are
34 severable.

35 **SECTION 4.** This act is effective when it becomes law.