

FIREARM PREEMPTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill clarifies that the Legislature has preempted the field of firearm regulation for the state.

Highlighted Provisions:

This bill:

- ▶ creates the Firearms Preemption Enforcement Act;
- ▶ clarifies preemption of the field of firearms regulation;
- ▶ defines terms;
- ▶ outlines violations of legislative preemption;
- ▶ provides for civil action for a violation of legislative preemption;
- ▶ outlines remedies for violating legislative preemption;
- ▶ addresses governmental immunity; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

47-3-303, as enacted by Laws of Utah 2013, Chapter 155



28 [53-5a-102](#), as last amended by Laws of Utah 2013, Chapter 278
 29 [63G-7-301](#), as last amended by Laws of Utah 2020, Chapters 288, 338, and 365
 30 [76-10-500](#), as enacted by Laws of Utah 1999, Chapter 5
 31 [76-10-501](#), as last amended by Laws of Utah 2015, Chapters 212 and 406

32 ENACTS:

33 [53-5a-103.5](#), Utah Code Annotated 1953
 34 [78B-6-2201](#), Utah Code Annotated 1953
 35 [78B-6-2202](#), Utah Code Annotated 1953
 36 [78B-6-2203](#), Utah Code Annotated 1953
 37 [78B-6-2204](#), Utah Code Annotated 1953



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **47-3-303** is amended to read:

41 **47-3-303. Rulemaking.**

42 (1) The State Armory Board, any state agency, or institution of higher education that
 43 operates or has control of a shooting range shall make rules in accordance with Title 63G,
 44 Chapter 3, Utah Administrative Rulemaking Act, to implement procedures for use of the range
 45 by the public.

46 (2) The rules shall include provisions requiring indoor shooting ranges to be available
 47 on a reservation basis, for firearms not exceeding the range design criteria:

- 48 (a) at least twice per week;
- 49 (b) after 4 p.m. on work or school days, or after students and faculty are excused or
- 50 dismissed on the work or school day; and
- 51 (c) between 8 a.m. and 10 p.m. on weekends.

52 (3) A political subdivision may enact an ordinance, rule, or resolution regarding the use
 53 of public shooting ranges, facilities, and targets to include limits on the use of firearms and
 54 ammunition within the range design criteria.

55 Section 2. Section **53-5a-102** is amended to read:

56 **53-5a-102. Uniform firearm laws.**

57 (1) In addition to the definitions in Section 76-10-501, "local authority" and "state
 58 agency" mean the same as those terms are defined in Section [78B-6-2202](#).

59 (2) The individual right to keep and bear arms being a constitutionally protected right
 60 under Article I, Section 6 of the Utah Constitution and the Second Amendment to the United
 61 States Constitution, the Legislature finds the need to provide uniform civil and criminal firearm
 62 laws throughout the state and declares that the Legislature occupies the whole field of state
 63 regulation of firearms and ammunition.

64 ~~[(2)]~~ (3) Except as specifically provided by state law, a local authority or state entity
 65 may not:

66 (a) prohibit an individual from owning, possessing, purchasing, selling, transferring,
 67 transporting, or keeping a firearm at the individual's place of residence, property, business, or
 68 in any vehicle lawfully in the individual's possession or lawfully under the individual's control;
 69 or

70 (b) require an individual to have a permit or license to purchase, own, possess,
 71 transport, or keep a firearm, ammunition, or firearm accessory.

72 ~~[(3)]~~ (4) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is
 73 uniformly applicable throughout this state and in all ~~[its]~~ the state's political subdivisions ~~[and~~
 74 ~~municipalities]~~.

75 ~~[(4)]~~ (5) ~~[All authority]~~ Authority to regulate firearms is reserved to the state except
 76 where the Legislature specifically delegates responsibility to a local ~~[authorities]~~ authority or
 77 state ~~[entities]~~ agency.

78 ~~[(5)]~~ (6) Unless specifically authorized by the Legislature by statute, a local authority
 79 or state ~~[entity]~~ agency, including organizations or vendors that contract with a local authority
 80 or state agency, may not enact, establish, or enforce any ordinance, regulation, rule, or policy
 81 pertaining to firearms that in any way inhibits or restricts the possession, transfer, or use of
 82 firearms on either public or private property.

83 ~~[(6) As used in this section:]~~

84 ~~[(a) "firearm" has the same meaning as defined in Section 76-10-501; and]~~

85 ~~[(b) "local authority or state entity" includes public school districts, public schools, and~~
 86 ~~state institutions of higher education.]~~

87 (7) Nothing in this section restricts or expands private property rights.

88 Section 3. Section **53-5a-103.5** is enacted to read:

89 **53-5a-103.5. Homeless shelters.**

90 (1) As used in this section, "homeless shelter" means a facility that provides temporary
91 shelter to homeless individuals and has the capacity to provide temporary shelter to at least 20
92 individuals per night.

93 (2) A local government entity may prohibit the possession of firearms within a
94 homeless shelter over which it exercises authority.

95 Section 4. Section **63G-7-301** is amended to read:

96 **63G-7-301. Waivers of immunity.**

97 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
98 obligation.

99 (b) Actions arising out of contractual rights or obligations are not subject to the
100 requirements of Section **63G-7-401**, **63G-7-402**, **63G-7-403**, or **63G-7-601**.

101 (c) The Division of Water Resources is not liable for failure to deliver water from a
102 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
103 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
104 condition, or safety condition that causes a deficiency in the amount of available water.

105 (2) Immunity from suit of each governmental entity is waived:

106 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
107 personal property;

108 (b) as to any action brought to foreclose mortgages or other liens on real or personal
109 property, to determine any adverse claim on real or personal property, or to obtain an
110 adjudication about any mortgage or other lien that the governmental entity may have or claim
111 on real or personal property;

112 (c) as to any action based on the negligent destruction, damage, or loss of goods,
113 merchandise, or other property while it is in the possession of any governmental entity or
114 employee, if the property was seized for the purpose of forfeiture under any provision of state
115 law;

116 (d) subject to Subsection **63G-7-302**(1), as to any action brought under the authority of
117 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
118 governmental entity when the governmental entity has taken or damaged private property for
119 public uses without just compensation;

120 (e) subject to Subsection **63G-7-302**(2), as to any action brought to recover attorney

121 fees under Sections 63G-2-405 and 63G-2-802;

122 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
123 Act;

124 (g) as to any action brought to obtain relief from a land use regulation that imposes a
125 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
126 Land Use Act;

127 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

128 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
129 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
130 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
131 or other public improvement;

132 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
133 proximately caused by a negligent act or omission of an employee committed within the scope
134 of employment; and

135 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
136 a sexual battery, as provided in Section 76-9-702.1, committed:

137 (i) against a student of a public elementary or secondary school, including a charter
138 school; and

139 (ii) by an employee of a public elementary or secondary school or charter school who:
140 (A) at the time of the sexual battery, held a position of special trust, as defined in
141 Section 76-5-404.1, with respect to the student;

142 (B) is criminally charged in connection with the sexual battery; and
143 (C) the public elementary or secondary school or charter school knew or in the exercise
144 of reasonable care should have known, at the time of the employee's hiring, to be a sex
145 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
146 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
147 background check under Section 53G-11-402.

148 (3) (a) As used in this Subsection (3):

149 (i) "Code of conduct" means a code of conduct that:

150 (A) is not less stringent than a model code of conduct, created by the State Board of
151 Education, establishing a professional standard of care for preventing the conduct described in

152 Subsection (3)(a)(i)(D);

153 (B) is adopted by the applicable local education governing body;

154 (C) regulates behavior of a school employee toward a student; and

155 (D) includes a prohibition against any sexual conduct between an employee and a
156 student and against the employee and student sharing any sexually explicit or lewd
157 communication, image, or photograph.

158 (ii) "Local education agency" means:

159 (A) a school district;

160 (B) a charter school; or

161 (C) the Utah Schools for the Deaf and the Blind.

162 (iii) "Local education governing board" means:

163 (A) for a school district, the local school board;

164 (B) for a charter school, the charter school governing board; or

165 (C) for the Utah Schools for the Deaf and the Blind, the state board.

166 (iv) "Public school" means a public elementary or secondary school.

167 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

168 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
169 the term "child" in that section to include an individual under age 18.

170 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
171 claim against a local education agency for an injury resulting from a sexual battery or sexual
172 abuse committed against a student of a public school by a paid employee of the public school
173 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

174 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
175 code of conduct; and

176 (ii) before the sexual battery or sexual abuse occurred, the public school had:

177 (A) provided training on the code of conduct to the employee; and

178 (B) required the employee to sign a statement acknowledging that the employee has
179 read and understands the code of conduct.

180 (4) (a) As used in this Subsection (4):

181 (i) "Higher education institution" means an institution included within the state system
182 of higher education under Section 53B-1-102.

183 (ii) "Policy governing behavior" means a policy adopted by a higher education
184 institution or the Utah Board of Higher Education that:

185 (A) establishes a professional standard of care for preventing the conduct described in
186 Subsections (4)(a)(ii)(C) and (D);

187 (B) regulates behavior of a special trust employee toward a subordinate student;

188 (C) includes a prohibition against any sexual conduct between a special trust employee
189 and a subordinate student; and

190 (D) includes a prohibition against a special trust employee and subordinate student
191 sharing any sexually explicit or lewd communication, image, or photograph.

192 (iii) "Sexual battery" means the offense described in Section [76-9-702.1](#).

193 (iv) "Special trust employee" means an employee of a higher education institution who
194 is in a position of special trust, as defined in Section [76-5-404.1](#), with a higher education
195 student.

196 (v) "Subordinate student" means a student:

197 (A) of a higher education institution; and

198 (B) whose educational opportunities could be adversely impacted by a special trust
199 employee.

200 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
201 claim for an injury resulting from a sexual battery committed against a subordinate student by a
202 special trust employee, unless:

203 (i) the institution proves that the special trust employee's behavior that otherwise would
204 constitute a sexual battery was:

205 (A) with a subordinate student who was at least 18 years old at the time of the
206 behavior; and

207 (B) with the student's consent; or

208 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
209 a policy governing behavior; and

210 (B) before the sexual battery occurred, the higher education institution had taken steps
211 to implement and enforce the policy governing behavior.

212 (5) Immunity from suit of each governmental entity and the governmental entity's
213 employees or agents is waived with respect to the provisions of Title 78B, Chapter 6, Part 22,

214 Firearms Preemption Enforcement Act.

215 Section 5. Section **76-10-500** is amended to read:

216 **76-10-500. Uniform law.**

217 (1) The individual right to keep and bear arms being a constitutionally protected right
218 under Article I, Section 6 of the Utah Constitution and the Second Amendment to the United
219 States Constitution, the Legislature finds the need to provide uniform civil and criminal laws
220 throughout the state and declares that the Legislature occupies the whole field of state
221 regulation of firearms and ammunition.

222 (2) Except as specifically provided by state law, [~~a citizen of the United States or a~~
223 ~~lawfully admitted alien shall not be~~] a local authority or state agency may not:

224 (a) [~~prohibited~~] prohibit an individual from owning, possessing, purchasing, selling,
225 transferring, transporting, or keeping any firearm [~~at his~~], ammunition, or firearm accessory at
226 the individual's place of residence, property, business, or in any vehicle lawfully in [~~his~~] the
227 individual's possession or lawfully under [~~his~~] the individual's control; or

228 (b) [~~required~~] require an individual to have a permit or license to purchase, own,
229 possess, transport, or keep a firearm, ammunition, or firearm accessory.

230 [~~(2)~~] (3) This part is uniformly applicable throughout this state and in all [~~its~~] the state's
231 political subdivisions [~~and municipalities~~].

232 (4) [~~All authority~~] Authority to regulate firearms [~~shall be~~] is reserved to the state
233 except where the Legislature specifically delegates responsibility to a local [~~authorities~~]
234 authority or state [~~entities~~] agency.

235 (5) Unless specifically authorized by the Legislature by statute, a local authority or
236 state [~~entity~~] agency may not enact or enforce any ordinance, regulation, [~~or~~] rule, or policy
237 pertaining to firearms that in any way inhibits or restricts the possession or use of firearms,
238 ammunition, or a firearm accessory on either public or private property.

239 (6) Nothing in this part restricts or expands private property rights.

240 Section 6. Section **76-10-501** is amended to read:

241 **76-10-501. Definitions.**

242 As used in this part:

243 (1) (a) "Antique firearm" means:

244 (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or

245 similar type of ignition system, manufactured in or before 1898; or
246 (ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the
247 replica:
248 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed
249 ammunition; or
250 (B) uses rimfire or centerfire fixed ammunition which is:
251 (I) no longer manufactured in the United States; and
252 (II) is not readily available in ordinary channels of commercial trade; or
253 (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and
254 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed
255 ammunition.
256 (b) "Antique firearm" does not include:
257 (i) a weapon that incorporates a firearm frame or receiver;
258 (ii) a firearm that is converted into a muzzle loading weapon; or
259 (iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by
260 replacing the:
261 (A) barrel;
262 (B) bolt;
263 (C) breechblock; or
264 (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).
265 (2) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#)
266 within the Department of Public Safety.
267 (3) (a) "Concealed firearm" means a firearm that is:
268 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
269 presence; and
270 (ii) readily accessible for immediate use.
271 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the
272 purposes of this part.
273 (4) "Criminal history background check" means a criminal background check
274 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
275 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms

276 dealer conducts business.

277 (5) "Curio or relic firearm" means a firearm that:

278 (a) is of special interest to a collector because of a quality that is not associated with
279 firearms intended for:

280 (i) sporting use;

281 (ii) use as an offensive weapon; or

282 (iii) use as a defensive weapon;

283 (b) (i) was manufactured at least 50 years before the current date; and

284 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

285 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
286 firearms to be a curio or relic of museum interest;

287 (d) derives a substantial part of its monetary value:

288 (i) from the fact that the firearm is:

289 (A) novel;

290 (B) rare; or

291 (C) bizarre; or

292 (ii) because of the firearm's association with an historical:

293 (A) figure;

294 (B) period; or

295 (C) event; and

296 (e) has been designated as a curio or relic firearm by the director of the United States
297 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

298 (6) (a) "Dangerous weapon" means:

299 (i) a firearm; or

300 (ii) an object that in the manner of its use or intended use is capable of causing death or
301 serious bodily injury.

302 (b) The following factors are used in determining whether any object, other than a
303 firearm, is a dangerous weapon:

304 (i) the location and circumstances in which the object was used or possessed;

305 (ii) the primary purpose for which the object was made;

306 (iii) the character of the wound, if any, produced by the object's unlawful use;

- 307 (iv) the manner in which the object was unlawfully used;
- 308 (v) whether the manner in which the object is used or possessed constitutes a potential
309 imminent threat to public safety; and
- 310 (vi) the lawful purposes for which the object may be used.
- 311 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
312 as defined by Section 76-10-306.
- 313 (7) "Dealer" means a person who is:
- 314 (a) licensed under 18 U.S.C. Sec. 923; and
- 315 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
316 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.
- 317 (8) "Enter" means intrusion of the entire body.
- 318 (9) "Federal Firearms Licensee" means a person who:
- 319 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
- 320 (b) is engaged in the activities authorized by the specific category of license held.
- 321 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or
322 short barreled rifle, or a device that could be used as a dangerous weapon from which is
323 expelled a projectile by action of an explosive.
- 324 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an
325 antique firearm.
- 326 (11) "Firearms transaction record form" means a form created by the bureau to be
327 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.
- 328 (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can
329 be readily restored to fire, automatically more than one shot without manual reloading by a
330 single function of the trigger.
- 331 (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
332 or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which,
333 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.
- 334 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol
335 or revolver" do not include an antique firearm.
- 336 (14) "House of worship" means a church, temple, synagogue, mosque, or other
337 building set apart primarily for the purpose of worship in which religious services are held and

338 the main body of which is kept for that use and not put to any other use inconsistent with its
339 primary purpose.

340 (15) "Local authority" means the same as that term is defined in Section 78B-6-2202.

341 [~~(15)~~] (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

342 [~~(16)~~] (17) "Readily accessible for immediate use" means that a firearm or other
343 dangerous weapon is carried on the person or within such close proximity and in such a manner
344 that it can be retrieved and used as readily as if carried on the person.

345 [~~(17)~~] (18) "Residence" means an improvement to real property used or occupied as a
346 primary or secondary residence.

347 [~~(18)~~] (19) "Securely encased" means not readily accessible for immediate use, such as
348 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
349 storage area of a motor vehicle, not including a glove box or console box.

350 [~~(19)~~] (20) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a
351 barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or
352 barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun
353 by alteration, modification, or otherwise, if the weapon as modified has an overall length of
354 fewer than 26 inches.

355 [~~(20)~~] (21) "Shotgun" means a smooth bore firearm designed to fire cartridges
356 containing pellets or a single slug.

357 [~~(21)~~] (22) "Shoulder arm" means a firearm that is designed to be fired while braced
358 against the shoulder.

359 [~~(22)~~] (23) "Slug" means a single projectile discharged from a shotgun shell.

360 [~~(23)~~] (24) "State agency" or "entity" means a department, commission, board, council,
361 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,
362 library, unit, bureau, panel, or other administrative unit of the state, including the Utah Board
363 of Higher Education, each institution of higher education, and the boards of trustees of each
364 higher education institution.

365 [~~(24)~~] (25) "Violent felony" means the same as that term is defined in Section
366 76-3-203.5.

367 Section 7. Section **78B-6-2201** is enacted to read:

368 **Part 22. Firearm Preemption Enforcement Act**

369 **78B-6-2201. Firearm Preemption Enforcement Act.**

370 This part is known as the "Firearm Preemption Enforcement Act."

371 Section 8. Section **78B-6-2202** is enacted to read:

372 **78B-6-2202. Definitions.**

373 As used in this part:

374 (1) "Ammunition" means a bullet, cartridge case, primer, propellant powder, or other
375 ammunition designed for use in any firearm, either as an individual component part or in a
376 completely assembled cartridge.

377 (2) "Firearm" means the same as that term is defined in Section [76-10-501](#).

378 (3) "Firearm accessory" means an item that is legal to use in conjunction with or
379 mounted upon a firearm, firearm action, or firearm receiver, but is not essential to the basic
380 function of a firearm.

381 (4) "Legislative preemption" means the preemption provided for in Sections [53-5a-102](#)
382 and [76-10-500](#).

383 (5) "Local authority" means a county, city, town, metro township, local district, local
384 education agency, public school, special service district under Title 17D, Chapter 1, Special
385 Service District Act, an entity created by interlocal cooperation agreement under Title 11,
386 Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute
387 as a political subdivision of the state.

388 (6) "Local education agency" means a school district or charter school.

389 (7) "State agency" means the same as that term is defined in Section [76-10-501](#).

390 Section 9. Section **78B-6-2203** is enacted to read:

391 **78B-6-2203. Violation of legislative preemption -- Exceptions.**

392 (1) A local authority or state agency that enacts or enforces an ordinance, regulation,
393 measure, directive, rule, enactment, order, or policy that violates legislative preemption is
394 liable as provided in this part.

395 (2) An ordinance, regulation, measure, directive, rule, enactment, order, or policy that
396 violates legislative preemption is void.

397 (3) This part does not prohibit:

398 (a) a law enforcement agency from enacting and enforcing regulations pertaining to
399 firearms, ammunition, or firearm accessories issued to or used by a peace officer in the course

400 of the peace officer's official duties;

401 (b) a court or administrative law judge from hearing and resolving any case or
402 controversy or issuing any opinion or order on a matter consistent with state law within the
403 jurisdiction of that court or administrative law judge;

404 (c) a rule of a correctional facility or mental or behavioral health facility under Section
405 76-8-311.3; or

406 (d) a local authority or state agency from enacting or enforcing an ordinance,
407 regulation, measure, directive, rule, enactment, order, or policy developed in response to and in
408 accordance with legislative authority.

409 Section 10. Section **78B-6-2204** is enacted to read:

410 **78B-6-2204. Civil action -- Injunction.**

411 (1) An individual who is harmed by a local authority or state agency that makes or
412 causes to be enforced an ordinance, regulation, measure, directive, rule, enactment, order, or
413 policy in violation of legislative preemption may:

414 (a) request that the local authority rescind or repeal the ordinance, regulation, measure,
415 directive, rule, enactment, order, or policy; or

416 (b) if the local authority declines to rescind or repeal the ordinance, regulation,
417 measure, directive, rule, enactment, order, or policy, file suit against the local authority or state
418 agency in any court of this state having jurisdiction over the local authority or state agency.

419 (2) If the court determines that a local authority or state agency violated legislative
420 preemption, the court shall:

421 (a) order that the relevant ordinance, regulation, measure, directive, rule, enactment,
422 order, or policy is void;

423 (b) issue a permanent injunction against the local authority or state agency prohibiting
424 the local authority or state agency from enforcing the void ordinance, regulation, measure,
425 directive, rule, enactment, order, or policy; and

426 (c) award to the prevailing party:

427 (i) actual damages, which includes the cost of time in bringing the civil action, or
428 defending against the action;

429 (ii) reasonable attorney fees and costs in accordance with the laws of this state; and

430 (iii) interest on the sums awarded pursuant to this Subsection (2) accrued at the legal

431 rate from the date on which the suit is filed.

432 (3) In accordance with Subsection [63G-7-301\(5\)](#), a state agency or local authority that

433 violates this part is not immune from suit or liability for the violation.