

**FIREARM PREEMPTION AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Chris H. Wilson**

House Sponsor: A. Cory Maloy

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**LONG TITLE**

**General Description:**

This bill addresses the Legislature's preemption of the field of firearm regulation for the state.

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-5a-102**, as last amended by Laws of Utah 2013, Chapter 278



28 [63G-7-301](#), as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

29 [76-10-500](#), as enacted by Laws of Utah 1999, Chapter 5

30 ENACTS:

31 [78B-6-2301](#), Utah Code Annotated 1953

32 [78B-6-2302](#), Utah Code Annotated 1953

33 [78B-6-2303](#), Utah Code Annotated 1953



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

36 Section 1. Section **53-5a-102** is amended to read:

37 **53-5a-102. Uniform firearm laws.**

38 (1) As used in this section:

39 (a) "Ammunition" means the same as that term is defined in Section [53-5d-102](#).

40 (b) "Dangerous weapon" means the same as that term is defined in Section [76-10-501](#).

41 (c) "Firearm" means:

42 (i) a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled rifle, or a  
43 device that could be used as a dangerous weapon from which is expelled a projectile by action  
44 of an explosive;

45 (ii) ammunition; and

46 (iii) a firearm accessory.

47 (d) "Firearm accessory" means the same as that term is defined in Section [53-5b-103](#).

48 (e) "Local or state governmental entity" means the same as that term is defined in  
49 Section [78B-6-2301](#).

50 (f) "Short barreled shotgun" or "short barreled rifle" means the same as that term is  
51 defined in Section [76-10-501](#).

52 (g) "Shotgun" means the same as that term is defined in Section [76-10-501](#).

53 (h) "Venue contractor" means the same as that term is defined in Section [78B-6-2301](#).

54 [(+)] (2) The individual right to keep and bear arms being a constitutionally protected  
55 right under Article I, Section 6 of the Utah Constitution and the Second Amendment to the  
56 United States Constitution, the Legislature finds the need to provide uniform civil and criminal  
57 firearm laws throughout the state and declares that the Legislature occupies the whole field of  
58 state regulation of firearms.

59           ~~[(2)]~~ (3) Except as specifically provided by state law, a local ~~[authority]~~ or state  
60 governmental entity may not:

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

65           (b) require an individual to have a permit or license to purchase, own, possess,  
66 transport, or keep a firearm.

67           ~~[(3)]~~ (4) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is  
68 uniformly applicable throughout this state and in all ~~[its]~~ the state's political subdivisions ~~[and~~  
69 municipalities].

70           ~~[(4) All authority]~~ (5) Authority to regulate firearms is reserved to the state except  
71 where the Legislature specifically delegates responsibility to local ~~[authorities]~~ or state  
72 governmental entities.

73           ~~[(5)]~~ (6) (a) Unless specifically authorized by the Legislature by statute, a local  
74 ~~[authority or state entity]~~ or state governmental entity or a venue contractor may not enact,  
75 establish, or enforce any ordinance, regulation, rule, contractual requirement, or policy  
76 pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on  
77 either public or private property.

78           (b) Notwithstanding Subsection (6)(a), a local or state governmental entity or a venue  
79 contractor may enact, establish, or enforce a contractual requirement or policy pertaining to  
80 firearms that inhibits or restricts the possession or use of firearms at a venue or facility owned  
81 by the local or state governmental entity if the inhibition or restriction is requested or required  
82 by a person who:

83           (i) rents or otherwise obtains the use of the venue or facility; or

84           (ii) is hired or contracted as a performer or presenter at the venue or facility.

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

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

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

89           ~~[(7) Nothing in this section restricts or expands]~~

90           (7) This section does not restrict or expand private property rights.

91           (8) A violation of this section is subject to Title 78B, Chapter 6, Part 23, Firearm

92 Preemption Enforcement Act.

93           Section 2. Section **63G-7-301** is amended to read:

94           **63G-7-301. Waivers of immunity.**

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

97           (b) Actions arising out of contractual rights or obligations are not subject to the  
98 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

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

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

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

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

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

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

118           (e) subject to Subsection [63G-7-302](#)(2), as to any action brought to recover attorney  
119 fees under Sections [63G-2-405](#) and [63G-2-802](#);

120           (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees

121 Act;

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

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

126 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
127 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

128 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
129 or other public improvement;

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

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

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

137 (ii) by an employee of a public elementary or secondary school or charter school who:

138 (A) at the time of the sexual battery, held a position of special trust, as defined in  
139 Section 76-5-404.1, with respect to the student;

140 (B) is criminally charged in connection with the sexual battery; and

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

146 (k) as to any action brought under Section 78B-6-2303.

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

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

149 (A) is not less stringent than a model code of conduct, created by the State Board of  
150 Education, establishing a professional standard of care for preventing the conduct described in  
151 Subsection (3)(a)(i)(D);

- 152 (B) is adopted by the applicable local education governing body;
- 153 (C) regulates behavior of a school employee toward a student; and
- 154 (D) includes a prohibition against any sexual conduct between an employee and a
- 155 student and against the employee and student sharing any sexually explicit or lewd
- 156 communication, image, or photograph.

157 (ii) "Local education agency" means:

- 158 (A) a school district;
- 159 (B) a charter school; or
- 160 (C) the Utah Schools for the Deaf and the Blind.

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

- 162 (A) for a school district, the local school board;
- 163 (B) for a charter school, the charter school governing board; or
- 164 (C) for the Utah Schools for the Deaf and the Blind, the state board.

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

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

167 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering

168 the term "child" in that section to include an individual under age 18.

169 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a

170 claim against a local education agency for an injury resulting from a sexual battery or sexual

171 abuse committed against a student of a public school by a paid employee of the public school

172 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

173 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a

174 code of conduct; and

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

- 176 (A) provided training on the code of conduct to the employee; and
- 177 (B) required the employee to sign a statement acknowledging that the employee has
- 178 read and understands the code of conduct.

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

180 (i) "Higher education institution" means an institution included within the state system

181 of higher education under Section 53B-1-102.

182 (ii) "Policy governing behavior" means a policy adopted by a higher education

183 institution or the Utah Board of Higher Education that:

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

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

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

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

191 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

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

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

196 (A) of a higher education institution; and

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

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

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

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

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

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

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

211 Section 3. Section 76-10-500 is amended to read:

212 **76-10-500. Uniform law.**

213 (1) As used in this section:

214 (a) "Directive" means the same as that term is defined in Section 78B-6-2301.

215 (b) "Firearm" means the same as that term is defined in Section 53-5a-102.

216 (c) "Local or state governmental entity" means the same as that term is defined in  
217 Section 78B-6-2301.

218 [(H)] (2) The individual right to keep and bear arms being a constitutionally protected  
219 right under Article I, Section 6 of the Utah Constitution and the Second Amendment to the  
220 United States Constitution, the Legislature finds the need to provide uniform civil and criminal  
221 laws throughout the state and declares that the Legislature occupies the whole field of state  
222 regulation of firearms.

223 (3) Except as specifically provided by state law, [~~a citizen of the United States or a~~  
224 ~~lawfully admitted alien shall not be~~] a local or state governmental entity may not:

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

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

231 [(2)] (4) This part is uniformly applicable throughout this state and in all [~~its~~] the state's  
232 political subdivisions [and municipalities. All authority].

233 (5) Authority to regulate firearms [~~shall be~~] is reserved to the state except where the  
234 Legislature specifically delegates responsibility to local [~~authorities~~] or state governmental  
235 entities.

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

240 (7) This part does not restrict or expand private property rights.

241 (8) A violation of this section is subject to Title 78B, Chapter 6, Part 23, Firearm  
242 Preemption Enforcement Act.

243 Section 4. Section **78B-6-2301** is enacted to read:

244 **Part 23. Firearm Preemption Enforcement Act.**



245 **78B-6-2301. Definitions.**246 As used in this part:247 (1) "Directive" means an ordinance, regulation, measure, rule, enactment, order,  
248 contractual requirement, or policy issued, enacted, or required by a local or state governmental  
249 entity or a venue contractor.250 (2) "Firearm" means the same as that term is defined in Section [53-5a-102](#).251 (3) "Legislative firearm preemption" means the preemption provided for in Sections  
252 [53-5a-102](#) and [76-10-500](#).253 (4) "Local or state governmental entity" means:254 (a) a department, commission, board, council, agency, institution, officer, corporation,  
255 fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other  
256 administrative unit of the state, including the Utah Board of Higher Education, each institution  
257 of higher education, and the boards of trustees of each higher education institution; or258 (b) a county, city, town, metro township, local district, local education agency, public  
259 school, school district, charter school, special service district under Title 17D, Chapter 1,  
260 Special Service District Act, an entity created by interlocal cooperation agreement under Title  
261 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in  
262 statute as a political subdivision of the state.263 (5) "Venue contractor" means a person who contracts with a local or state  
264 governmental entity to manage or operate a venue or facility owned by a local or state  
265 governmental entity.266 Section 5. Section **78B-6-2302** is enacted to read:267 **78B-6-2302. Violation of legislative preemption -- Exceptions.**268 (1) A local or state governmental entity or a venue contractor may not enact or enforce  
269 a directive that violates legislative firearm preemption.270 (2) This part does not prohibit the enactment or enforcement of a directive:271 (a) by a law enforcement agency if the directive pertains to a firearm issued to or used  
272 by a peace officer in the course of the peace officer's official duties;273 (b) by a correctional facility or mental health facility under Section [76-8-311.3](#);274 (c) of judicial administration if the directive establishes a secure courthouse;275 (d) by the State Tax Commission if the directive establishes a secure area within a

276 State Tax Commission facility;

277 (e) by a local or state governmental entity if the directive is developed in response to  
278 and in accordance with legislative authority; or

279 (f) in accordance with Subsection [53-5a-102\(6\)\(b\)](#).

280 Section 6. Section **78B-6-2303** is enacted to read:

281 **78B-6-2303. Civil action -- Injunction -- Damages -- Immunity.**

282 (1) A person who is harmed by a local or state governmental entity or a venue  
283 contractor that makes or causes to be enforced a directive in violation of legislative firearm  
284 preemption may submit a written communication to the local or state governmental entity or  
285 the venue contractor that harmed the person asking the local or state governmental entity or the  
286 venue contractor that harmed the person to rescind or repeal the directive.

287 (2) (a) If a local or state governmental entity or a venue contractor fails to rescind or  
288 repeal a directive within 30 days after the day on which the local or state governmental entity  
289 or the venue contractor receives a request described in Subsection (1), the person who  
290 submitted the request may file suit against the local or state governmental entity or the venue  
291 contractor that failed to rescind or repeal the directive.

292 (b) The suit described in Subsection (2)(a) may be filed in any court of this state having  
293 jurisdiction over the local or state governmental entity or the venue contractor that failed to  
294 rescind or repeal the directive in accordance with Title 63G, Chapter 7, Governmental  
295 Immunity Act of Utah, if applicable.

296 (3) If the court determines that the local or state governmental entity or the venue  
297 contractor that failed to rescind or repeal the directive violated legislative firearm preemption,  
298 the court shall:

299 (a) order that the relevant directive is void;

300 (b) prohibit the local or state governmental entity or the venue contractor that failed to  
301 rescind or repeal the void directive from enforcing the void directive; and

302 (c) award to the prevailing party:

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

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

306 (iii) interest on the sums awarded under this Subsection (3) accrued at the legal rate

307 from the date on which the suit is filed.