GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2021

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H.B. 189 Mar 1, 2021 HOUSE PRINCIPAL CLERK

HOUSE BILL DRH40123-ML-44A

Short Title:Second Amendment Preservation Act.(Public)Sponsors:Representatives Kidwell, Hanig, Goodwin, and Adams (Primary Sponsors).Referred to:

A BILL TO BE ENTITLED

2 AN ACT TO ENACT THE SECOND AMENDMENT PRESERVATION ACT.

Whereas, the General Assembly 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; 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

Whereas, the limitation of the federal government's power is affirmed under Amendment X of the Constitution of the United States, 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; 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 itself as to whether infractions of the compact have occurred, as well as to determine the mode 26 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



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General Assembly Of North Carolina organizing, arming, and disciplining militia forces actively employed in the service of the United 1 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 defense and general welfare of the United States" and "to make all laws which shall be necessary 10 and proper for carrying into execution the powers vested by the Constitution of the United States 11 in the government of the United States, or in any department or office thereof." These 12 constitutional provisions merely identify the means by which the federal government may 13 14 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 15 governments. Consequently, the General Assembly rejects any claim that the taxing and spending 16 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 and Section 30 of Article I of the North Carolina Constitution: and 22 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 Prohibition. - Notwithstanding any provision of law to the contrary, the following (a) 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 Carolina Constitution, within the borders of this State: 37 Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or 38 (1)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 citizens to purchase or own those items. 41 Any registering or tracking of firearms, firearm accessories, or ammunition 42 (2)43 that might reasonably be expected to encroach on or impair the right of law-abiding citizens to purchase or own those items. 44 Any registration or tracking of the owners of firearms, firearm accessories, or 45 (3) ammunition that might reasonably be expected to encroach on or impair the 46 right of law-abiding citizens to purchase or own those items. 47 Any act forbidding the possession, ownership, use, or transfer of a firearm, 48 <u>(4)</u> 49 firearm accessory, or ammunition by law-abiding citizens. 50 Any act ordering the confiscation of firearms, firearm accessories, or (5) ammunition from law-abiding citizens. 51

General Assembly Of North Carolina

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1	(b) <u>Retroactive Application. – All federal acts, laws, executive orders, administrative</u>
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) <u>Authority to Enforce Prohibited Acts. – No entity or person, including any public</u>
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) <u>Liability. – Any entity or person who knowingly violates the provisions of subsection</u>
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.