

1 HB223  
2 203635-1  
3 By Representatives Hanes, Holmes, Wadsworth, Sorrell, Whorton,  
4 Mooney, Dismukes and Easterbrook  
5 RFD: Public Safety and Homeland Security  
6 First Read: 11-FEB-20

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8 SYNOPSIS: This bill would create the Second Amendment  
9 Preservation Act to protect the right to keep and  
10 bear arms.

11 Amendment 621 of the Constitution of Alabama  
12 of 1901, now appearing as Section 111.05 of the  
13 Official Recompilation of the Constitution of  
14 Alabama of 1901, as amended, prohibits a general  
15 law whose purpose or effect would be to require a  
16 new or increased expenditure of local funds from  
17 becoming effective with regard to a local  
18 governmental entity without enactment by a 2/3 vote  
19 unless: it comes within one of a number of  
20 specified exceptions; it is approved by the  
21 affected entity; or the Legislature appropriates  
22 funds, or provides a local source of revenue, to  
23 the entity for the purpose.

24 The purpose or effect of this bill would be  
25 to require a new or increased expenditure of local  
26 funds within the meaning of the amendment. However,  
27 the bill does not require approval of a local

1 governmental entity or enactment by a 2/3 vote to  
2 become effective because it comes within one of the  
3 specified exceptions contained in the amendment.  
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5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

9 Relating to firearms; to create the Second Amendment  
10 Preservation Act to protect the right to keep and bear arms;  
11 and in connection therewith would have as its purpose or  
12 effect the requirement of a new or increased expenditure of  
13 local funds within the meaning of Amendment 621 of the  
14 Constitution of Alabama of 1901, now appearing as Section  
15 111.05 of the Official ReCompilation of the Constitution of  
16 Alabama of 1901, as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited  
19 as the Second Amendment Preservation Act.

20 Section 2. The Legislature finds and declares that:

21 (1) The Legislature is firmly resolved to support  
22 and defend the United States Constitution against every  
23 aggression, either foreign or domestic, and is duty-bound to  
24 watch over and oppose every infraction of those principles  
25 which constitute the basis of the Union of the States, because  
26 only a faithful observance of those principles can secure the  
27 nation's existence and the public happiness.

1           (2) Acting through the United States Constitution,  
2 the people of the several states created the federal  
3 government to be their agent in the exercise of a few defined  
4 powers, while reserving to the state governments the power to  
5 legislate on matters which concern the lives, liberties, and  
6 properties of citizens in the ordinary course of affairs.

7           (3) The limitation of the federal government's power  
8 is affirmed under the Tenth Amendment to the United States  
9 Constitution, which defines the total scope of federal power  
10 as being that which has been delegated by the people of the  
11 several states to the federal government, and all power not  
12 delegated to the federal government in the Constitution of the  
13 United States is reserved to the states respectively, or to  
14 the people themselves.

15           (4) Whenever the federal government assumes powers  
16 that the people did not grant it in the Constitution, its acts  
17 are unauthoritative, void, and of no force.

18           (5) The several states of the United States of  
19 America are not united on the principle of unlimited  
20 submission to their federal government. The government created  
21 by the compact among the states is not the exclusive or final  
22 judge of the extent of the powers granted to it by the  
23 Constitution because that would have made the federal  
24 government's discretion, and not the Constitution, the measure  
25 of those powers. To the contrary, as in all other cases of  
26 compacts among powers having no common judge, each party has  
27 an equal right to judge itself and decide its mode and measure

1 of redress. Although the several states have granted supremacy  
2 to laws and treaties made pursuant to the powers granted in  
3 the Constitution, that supremacy does not apply to various  
4 federal statutes, orders, rules, regulations, or other actions  
5 that restrict or prohibit the manufacture, ownership, and use  
6 of firearms, firearm accessories, or ammunition exclusively  
7 within the borders of Alabama. Those statutes, orders, rules,  
8 regulations, and other actions exceed the powers granted to  
9 the federal government except to the extent they are necessary  
10 and proper for the government and regulation of the land and  
11 naval forces of the United States or for the organizing,  
12 arming, and disciplining of militia forces actively employed  
13 in the service of the United States Armed Forces.

14 (6) The people of the several states have given  
15 Congress the power "to regulate commerce with foreign nations,  
16 and among the several states, and with the Indian tribes," but  
17 regulating commerce does not include the power to limit  
18 citizens' right to keep and bear arms in defense of their  
19 families, neighbors, persons, or property, or to dictate what  
20 sort of arms and accessories law-abiding mentally competent  
21 Alabamians may buy, sell, exchange, or otherwise possess  
22 within the borders of this state.

23 (7) The people of the several states have also given  
24 Congress the power "to lay and collect taxes, duties, imports,  
25 and excises, to pay the debts, and provide for the common  
26 defense and general welfare of the United States" and "to make  
27 all laws which shall be necessary and proper for carrying into

1 execution the powers vested by the Constitution in the  
2 government of the United States, or in any department or  
3 officer thereof." These constitutional provisions merely  
4 identify the means by which the federal government may execute  
5 its limited powers and ought not be construed as to give  
6 unlimited powers, because to do so would be to destroy the  
7 balance of power between the federal government and the state  
8 governments. The Legislature denies any claim that the taxing  
9 and spending powers of Congress can be used to diminish in any  
10 way the people's right to keep and bear arms.

11 (8) The people of Alabama have vested the  
12 Legislature with the authority to regulate the manufacture,  
13 possession, exchange, and use of firearms within this state's  
14 borders, subject only to the limits imposed by the Second  
15 Amendment to the United States Constitution and the  
16 Constitution of Alabama of 1901.

17 Section 3. (a) All federal acts, laws, orders,  
18 rules, and regulations, whether past, present, or future, that  
19 infringe on the people's right to keep and bear arms as  
20 guaranteed by the Second Amendment to the United States  
21 Constitution shall be invalid in this state, shall not be  
22 recognized by this state, are specifically rejected by this  
23 state, and shall be considered null and void and of no effect  
24 in this state.

25 (b) The federal acts, laws, orders, rules, and  
26 regulations referenced in subsection (a) include, but are not  
27 limited to all of the following:

1                   (1) The provisions of the federal Gun Control Act of  
2 1934.

3                   (2) The provisions of the federal Gun Control Act of  
4 1968.

5                   (3) Any tax, levy, fee, or stamp imposed on  
6 firearms, firearm accessories, or ammunition not common to all  
7 other goods and services that could have a chilling effect on  
8 the purchase or ownership of those items by law-abiding  
9 citizens.

10                   (4) Any registering or tracking of firearms, firearm  
11 accessories, or ammunition that could have a chilling effect  
12 on the purchase or ownership of those items by law-abiding  
13 citizens.

14                   (5) Any registering or tracking of the owners of  
15 firearms, firearm accessories, or ammunition that could have a  
16 chilling effect on the purchase or ownership of those items by  
17 law-abiding citizens.

18                   (6) Any act forbidding the possession, ownership, or  
19 use or transfer of any type of firearm, firearm accessory, or  
20 ammunition by law-abiding citizens.

21                   (7) Any act ordering the confiscation of firearms,  
22 firearm accessories, or ammunition from law-abiding citizens.

23                   Section 4. It shall be the duty of the courts and  
24 law enforcement agencies of this state to protect the rights  
25 of law-abiding citizens to keep and bear arms from the  
26 infringements included in Section 3.

1           Section 5. No public officer or employee of this  
2 state shall have any authority to enforce or attempt to  
3 enforce any of the infringements on the right to keep and bear  
4 arms included in Section 3.

5           Section 6. Any official, agent, or employee of the  
6 United States government who enforces or attempts to enforce  
7 any of the infringements on the right to keep and bear arms  
8 included in Section 3 is guilty of a Class A misdemeanor.

9           Section 7. Any Alabama citizen who has been subject  
10 to an effort to enforce any of the infringements on the right  
11 to keep and bear arms included in Section 3 shall have a  
12 private cause of action for declaratory judgment and for  
13 damages against any person or entity attempting that  
14 enforcement.

15           Section 8. Although this bill would have as its  
16 purpose or effect the requirement of a new or increased  
17 expenditure of local funds, the bill is excluded from further  
18 requirements and application under Amendment 621, now  
19 appearing as Section 111.05 of the Official Recompilation of  
20 the Constitution of Alabama of 1901, as amended, because the  
21 bill defines a new crime or amends the definition of an  
22 existing crime.

23           Section 9. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law.