

1 HB400  
2 209746-1  
3 By Representative Allen (Constitutional Amendment)  
4 RFD: Judiciary  
5 First Read: 11-FEB-21

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8 SYNOPSIS: Under existing constitutional law, the  
9 federal government may not require a state or its  
10 officers to administer or enforce a federal  
11 regulatory program.

12 This bill would propose an amendment to the  
13 Constitution of Alabama of 1901, to create the  
14 Alabama Firearm Protection Amendment, to prohibit  
15 the state and its agencies and political  
16 subdivisions from participating in the enforcement  
17 of any federal act, law, order, rule, or regulation  
18 relating to firearms, firearm accessories, or  
19 ammunition.

20 Under existing constitutional law, the  
21 United States Congress is given the authority to  
22 regulate interstate commerce.

23 This bill would provide that firearms,  
24 firearm accessories, and ammunition that are  
25 manufactured in this state and remain in this  
26 state, and are therefore only engaged in intrastate  
27 commerce, are not subject to federal law or

1 regulation, including registration, under the  
2 authority of the United States Congress to regulate  
3 interstate commerce.

4  
5 A BILL  
6 TO BE ENTITLED  
7 AN ACT

8  
9 Relating to firearms; to propose an amendment to the  
10 Constitution of Alabama of 1901, to provide prohibitions on  
11 the enforcement of federal laws relating to firearms, firearm  
12 accessories, and ammunition; and to provide that certain  
13 firearms, firearm accessories, and ammunition that are  
14 manufactured in this state are not subject to federal law or  
15 regulation.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. The following amendment to the  
18 Constitution of Alabama of 1901, as amended, is proposed and  
19 shall become valid as a part thereof when approved by a  
20 majority of the qualified electors voting thereon and in  
21 accordance with Sections 284, 285, and 287 of the Constitution  
22 of Alabama of 1901, as amended:

23 PROPOSED AMENDMENT

24 PART I. This amendment shall be known and may be  
25 cited as the Alabama Firearm Protection Amendment.

26 PART II. (a) The Legislature makes the following  
27 findings concerning the right to keep and bear arms:

1           (1) The Second Amendment to the United States  
2 Constitution protects an individual's right to "keep and bear  
3 arms" and further provides that the right to keep and bear  
4 arms may not be infringed.

5           (2) It is the intent of the Legislature to protect  
6 Alabama employees, including law enforcement officers, from  
7 being directed, through federal executive orders, agency  
8 orders, statutes, laws, rules, or regulations that violate  
9 their oath of office and individual rights affirmed under the  
10 Second Amendment of the United States Constitution and Section  
11 26 of the Constitution of Alabama of 1901.

12           (3) Pursuant to and in furtherance of the principles  
13 of federalism enshrined in the United States Constitution, the  
14 federal government may not commandeer this state's officers,  
15 agents, or employees to participate in the enforcement or  
16 facilitation of any federal program not expressly required by  
17 the United States Constitution.

18           (4) The right to be free from the commandeering hand  
19 of the federal government has been most notably recognized by  
20 the United States Supreme Court in *Printz v. United States*,  
21 521 U.S. 898 (1997), when the Court held: "The Federal  
22 Government may neither issue directives requiring the States  
23 to address particular problems, nor command the States'  
24 officers, or those of their political subdivisions, to  
25 administer or enforce a federal regulatory program."

26           (5) The anti-commandeering principles recognized by  
27 the U.S. Supreme Court in *Printz* are predicated upon the

1 advice of James Madison, who, in The Federalist No. 46, argued  
2 for a "refusal to cooperate with officers of the Union" when  
3 faced with unconstitutional federal measures or  
4 constitutional, but unpopular, federal measures.

5 (b) (1) No public funds of this state or any  
6 political subdivision of this state may be allocated for the  
7 implementation, regulation, or enforcement of any executive  
8 order or directive issued by the President of the United  
9 States, or of any act of the United States Congress, that  
10 becomes effective after January 1, 2021, that regulates the  
11 ownership, use, or possession of firearms, ammunition, or  
12 firearm accessories.

13 (2) No property of this state, or any political  
14 subdivision of this state, shall be allocated for the  
15 implementation, regulation, or enforcement of any executive  
16 order or directive issued by the President of the United  
17 States, or any act of the United States Congress, that becomes  
18 effective after January 1, 2021, that regulates the ownership,  
19 use, or possession of firearms, ammunition, or firearm  
20 accessories.

21 (3) No appointed or elected official, officer,  
22 employee, or agent of the state, or any political subdivision  
23 of the state, when acting in an official capacity, shall  
24 implement, administer, or enforce an executive order or  
25 directive issued by the President of the United States, or any  
26 act of the United States Congress, that becomes effective

1 after January 1, 2021, that regulates the ownership, use, or  
2 possession of firearms, ammunition, or firearm accessories.

3 PART III. (a) Upon the adoption of a rule, order,  
4 ordinance, resolution, or other official policy by a political  
5 subdivision of the state which intentionally requires actions  
6 that violate Part II, a resident of this state may file a  
7 complaint with the Attorney General. The complaint shall  
8 include evidence supporting an allegation that the political  
9 subdivision has adopted a rule, order, ordinance, resolution,  
10 or policy under which the entity enforces a federal executive  
11 order or act of the United States Congress in violation of  
12 Part II.

13 (b) If the Attorney General determines that a  
14 complaint filed under subsection (a) is valid, the Attorney  
15 General may compel compliance with Part II by filing a  
16 petition in the circuit court of the county in which the  
17 principal office of the political subdivision is located.

18 (c) Upon a finding that the political subdivision is  
19 in violation of Part II, the political subdivision shall not  
20 be eligible for and may not receive any of the following:

21 (1) A state grant, gift, endowment, or any other sum  
22 of money or aid from the State of Alabama or a department,  
23 board, or agency thereof, including the Community Development  
24 Block Grant Program administered by the Alabama Department of  
25 Economic and Community Affairs.

26 (2) Any allocation of any state revenues directly  
27 shared with local governing bodies not otherwise guaranteed by

1 the Constitution of Alabama of 1901, including, but not  
2 limited to, all of the following:

- 3 a. Motor carrier fuel tax revenues.
- 4 b. Gasoline tax revenues.
- 5 c. Business privilege tax revenues.
- 6 d. Alcoholic Beverage Control Board licensing and  
7 penalty revenues.
- 8 e. Motor vehicle license tax or registration fee  
9 revenues.
- 10 f. Cigarette tax revenues.
- 11 g. Beer tax revenues.
- 12 h. Tobacco tax revenues, excluding cigarettes.

13 (d) Upon a finding that the political subdivision is  
14 in violation of Part II as provided in subsection (c), the  
15 court shall award the Attorney General reasonable expenses  
16 incurred in obtaining relief under this part, including court  
17 costs, reasonable attorney's fees, investigative costs,  
18 witness fees, and deposition costs.

19 PART IV. (a) The Legislature makes the following  
20 findings concerning the right to keep and bear arms within  
21 this state:

22 (1) The Tenth Amendment to the United States  
23 Constitution guarantees to the states and their people all  
24 powers not granted to the federal government elsewhere in the  
25 United States Constitution and reserves to the State of  
26 Alabama and its people certain powers as they were understood  
27 at the time that Alabama was admitted to statehood in 1819,

1 and the guaranty of these powers is a matter of contract  
2 between the State of Alabama and its people and the United  
3 States as of the time that the compact with the United States  
4 was agreed upon and adopted by Alabama and the United States  
5 in 1819.

6 (2) The Ninth Amendment to the United States  
7 Constitution guarantees to the people rights not granted in  
8 the United States Constitution and reserves to the people of  
9 Alabama certain rights as they were understood at the time  
10 Alabama was admitted into statehood in 1819, and the guaranty  
11 of these rights is a matter of contract between the State of  
12 Alabama and its people and the United States as of the time  
13 that the compact with the United States was agreed upon and  
14 adopted by Alabama and the United States in 1819.

15 (3) The power to regulate intrastate commerce is  
16 vested in the several states under the Ninth and Tenth  
17 Amendments to the United States Constitution.

18 (4) The Second Amendment to the United States  
19 Constitution reserves to the people the right to keep and bear  
20 arms as that right was understood at the time that Alabama was  
21 admitted into statehood in 1819, and the guaranty of that  
22 right is a matter of contract between the State of Alabama and  
23 its people and the United States as of the time that the  
24 compact with the United States was agreed upon and adopted by  
25 Alabama and the United States in 1819.

26 (b) As used in this part, the following terms shall  
27 have the following meanings:



1           (1) FIREARM ACCESSORY. An item that is used in  
2 conjunction with or mounted onto a firearm, but is not  
3 essential to the basic function of the firearm. The term  
4 includes a telescopic or laser sight, magazine, flash or sound  
5 suppressor, folding or aftermarket stock and grip,  
6 speedloader, ammunition carrier, and light for target  
7 illumination.

8           (2) GENERIC AND INSIGNIFICANT PART. An item that has  
9 manufacturing or consumer product applications other than  
10 inclusion in a firearm, a firearm accessory, or ammunition.  
11 The term includes a spring, screw, nut, and pin.

12           (3) MANUFACTURED IN THIS STATE. An item that is  
13 manufactured in this state from basic materials and without  
14 the inclusion of any part imported from another state other  
15 than a generic and insignificant part. Notwithstanding the  
16 foregoing, a firearm is manufactured in this state if it is  
17 manufactured as described in the preceding sentence without  
18 regard to whether a firearm accessory or ammunition imported  
19 into this state from another state is attached to or used in  
20 conjunction with it.

21           (4) MANUFACTURING. The term includes forging,  
22 casting, machining, or any other process used for working a  
23 material.

24           (c) Subject to subsection (e), a firearm, a firearm  
25 accessory, or ammunition that is commercially or privately  
26 manufactured in Alabama, that is sold in Alabama, and that  
27 remains within the borders of Alabama is not subject to

1 federal law or regulation, including registration, under the  
2 authority of the United States Congress to regulate interstate  
3 commerce, as the item has not traveled in interstate commerce.

4 (d) (1) This part applies to firearms, ammunition, or  
5 firearm accessories that are manufactured in Alabama from  
6 basic materials and that can be manufactured without the  
7 inclusion of any significant parts imported from another  
8 state.

9 (2) Generic and insignificant parts that have other  
10 manufacturing or consumer product applications are not  
11 firearms, ammunition, or firearm accessories, and their  
12 importation into Alabama and incorporation into a firearm,  
13 ammunition, or a firearm accessory manufactured in Alabama  
14 does not subject the firearm, ammunition, or firearm accessory  
15 to federal regulation.

16 (3) A basic material from which a firearm, a firearm  
17 accessory, or ammunition is manufactured in this state,  
18 including unmachined steel and unshaped wood, is not a  
19 firearm, a firearm accessory, or ammunition and is not subject  
20 to federal regulation under the authority of the United States  
21 Congress to regulate interstate commerce as if it actually  
22 were a firearm, a firearm accessory, or ammunition.

23 (e) A firearm manufactured in this state is exempt  
24 from federal law or regulation under subsection (c) only if  
25 the firearm has the words "Made in Alabama" clearly stamped on  
26 a central metallic part of the firearm, such as the receiver  
27 or frame.

1 (f) The Attorney General shall defend a resident of  
2 this state whom the federal government attempts to prosecute,  
3 claiming the power to regulate interstate commerce, for a  
4 violation of a federal law or regulation concerning the  
5 manufacture, sale, transfer, or possession of firearms,  
6 ammunition, or firearm accessories manufactured and retained  
7 in this state.

8 (g) This part does not apply to any of the  
9 following:

10 (1) A firearm that cannot be carried and used by one  
11 person.

12 (2) A firearm that has a bore diameter greater than  
13 1.5 inches and that uses smokeless powder and not black powder  
14 as a propellant.

15 (3) Ammunition with a projectile that explodes using  
16 an explosion of chemical energy after the projectile leaves  
17 the firearm.

18 (4) A firearm that discharges two or more  
19 projectiles with one activation of the trigger or other firing  
20 device.

21 PART V. (a) The following federal acts, laws,  
22 executive orders, administrative orders, court orders, rules,  
23 and regulations shall be considered infringements on the  
24 people's right to keep and bear arms, as guaranteed by the  
25 Second Amendment to the United States Constitution, within the  
26 borders of this state, including, but not limited to, all of  
27 the following:

1           (1) Any tax, levy, fee, or stamp imposed on  
2 firearms, ammunition, or firearm accessories not common to all  
3 other goods and services that might reasonably be expected to  
4 create a chilling effect on the purchase or ownership of those  
5 items by law abiding residents of the state.

6           (2) Any registration or tracking of firearms,  
7 ammunition, or firearm accessories that might reasonably be  
8 expected to create a chilling effect on the purchase or  
9 ownership of those items by law abiding residents of the  
10 state.

11           (3) Any registration or tracking of the owners of  
12 firearms, ammunition, or firearm accessories that might  
13 reasonably be expected to create a chilling effect on the  
14 purchase or ownership of those items by law abiding residents  
15 of the state.

16           (4) Any act forbidding the possession, ownership,  
17 use, or transfer of a firearm, ammunition, or firearm  
18 accessory by law abiding residents of the state.

19           (5) Any act ordering the confiscation of firearms,  
20 ammunition, or firearm accessories from law abiding residents  
21 of the state.

22           (b) A federal act, law, executive order,  
23 administrative order, court order, rule, or regulation that  
24 infringes on a person's right to keep and bear arms as  
25 provided under subsection (a) shall be void and of no effect  
26 in this state.

1 (c) As used in this part, the term "law abiding  
2 residents of the state" includes those individuals not  
3 otherwise precluded under state law from possessing a firearm.

4 PART VI. If any provision of this amendment or its  
5 application to any particular person or circumstance is held  
6 invalid, that provision or its application is severable and  
7 does not affect the validity of other provisions or  
8 applications of this amendment.

9 Section 2. An election upon the proposed amendment  
10 shall be held in accordance with Sections 284 and 285 of the  
11 Constitution of Alabama of 1901, now appearing as Sections 284  
12 and 285 of the Official Recompilation of the Constitution of  
13 Alabama of 1901, as amended, and the election laws of this  
14 state.

15 Section 3. The appropriate election official shall  
16 assign a ballot number for the proposed constitutional  
17 amendment on the election ballot and shall set forth the  
18 following description of the substance or subject matter of  
19 the proposed constitutional amendment:

20 "Proposing an amendment to the Constitution of  
21 Alabama of 1901, to provide prohibitions on the enforcement of  
22 federal laws relating to firearms, firearm accessories, and  
23 ammunition; and to provide that certain firearms, firearm  
24 accessories, and ammunition that are manufactured in this  
25 state are not subject to federal law or regulations.

26 "Proposed by Act \_\_\_\_\_."

1                    This description shall be followed by the following  
2    language:  
3                    "Yes ( ) No ( )."