

MOTION

DRAFT Amendments to the “ALEC Consistency in Firearms Regulation Act”

Ms. Tara Mica, *National Rifle Association*, motions to amend the “ALEC Consistency in Firearms Regulation Act” (1999) by striking and introducing the following:

Summary

This Act would prohibit local jurisdictions from independently enacting restrictions on the possession of firearms. This Act would also preempt the right of local jurisdictions to bring certain civil actions against firearms or ammunition manufacturers, trade associations, and dealers.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as the Consistency in Firearms Regulation Act.

Section 2. {Intent; Declaration}

The purpose of this section is to establish complete state control over regulation and policy pertaining to firearms, firearm accessories, and ammunition in order to ensure that such regulation and policy is applied uniformly throughout this state to each person subject to the state's jurisdiction and to ensure protection of the right to keep and bear arms recognized by the Constitution of the United States [and of this State, if applicable]. This section is to be liberally construed to effectuate its purpose. The (insert state body) declares that the lawful design, marketing, manufacture, or sale of firearms or ammunition to the public is not unreasonably dangerous activity and does not constitute a nuisance per se, and further finds that the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, or sale, is the proximate cause of injuries arising from their unlawful use.

Section 3. {Definitions}

(A) As used in this Act:

(1) "Ammunition" means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzleloading firearms, and any propellant used in firearms or ammunition.

45 (2) "Firearm accessory" means a device specifically adapted to enable the
46 wearing or carrying about one's person, or the storage or mounting in or on a
47 conveyance, of a firearm, or an attachment or device specifically adapted to be
48 inserted into or affixed onto a firearm to enable, alter, or improve the functioning
49 or capabilities of the firearm.

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51 (3) "Firearm" means a pistol, revolver, rifle, shotgun, machine gun, submachine
52 gun, or black powder weapon which is designed to, capable of, or may be readily
53 converted to expel a projectile by the action of an explosive.

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55 (4) "Person adversely affected" means, in addition to any person who otherwise
56 has standing pursuant to the laws of the State to bring an action under this section,
57 any person who:

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59 (a) Can legally possess a firearm under the laws of the State and the
60 United States;

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62 (b) Owns, possesses, stores, transports, carries or transfers firearms,
63 ammunition or ammunition components within the political subdivision in
64 question or would do so but for the ordinance, resolution, rule or practice
65 at issue; and

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67 (c) Is, or if present in the political subdivision in question would be,
68 subject to the ordinance, resolution, rule or practice at issue, whether or
69 not specific enforcement action has been initiated or threatened against
70 such person; or

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72 (d) A membership organization the members of which include a person
73 described in subparagraphs (a) through (c) of this Section and that is
74 dedicated in whole or in part to protecting the legal, civil or constitution
75 rights of its membership.

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77 (5) "Political subdivision" means a county, city, township, school district, or any
78 other subunit of this state.

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80 (6) "Post-judgment liquidated damages." A sum equal to three times the actual
81 damages, reasonable attorney fees and costs incurred by a party who successfully
82 brings or maintains an action described under Subsections (4)(D) and (E) of this
83 Act.

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85 (7) "Prejudgment liquidated damages." A sum equal to two times the actual
86 damages, reasonable attorney fees and costs incurred by a party who brings or
87 maintains an action described under Subsections (4)(D) and (E) of this Act.

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89 Section 4. {State preemption of local firearms laws; Exceptions; Remedies for
90 unlawful regulation.} Any political subdivision shall not impose special taxation on,

91 ~~enact any law, ordinance or regulation pertaining to, or regulate in any other manner the~~
92 ~~ownership, registration, purchase, sale, transfer, transportation, carrying, or possession of~~
93 ~~handguns or other firearms, ammunition for handguns or other firearms, or components~~
94 ~~of handguns or other firearms, except as otherwise provided in state or federal law.~~

95 (A) Except as otherwise provided in this section or as expressly authorized by a statute of
96 this state, the regulation of all of the following is hereby declared to be the exclusive
97 domain of the state:

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(1) Firearms, firearm accessories, and ammunition.

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(2) The ownership, possession, carrying, transportation, registration, transfer, and
storage of firearms, firearm accessories, and ammunition.

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(3) Commerce in and taxation of firearms, firearm accessories, and ammunition.

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(4) Any other matter pertaining to firearms, firearm accessories, and ammunition.

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(B) An ordinance, rule, resolution, or policy adopted by a political subdivision of this
state, or an official action -- including in any legislative, police power, or proprietary
capacity -- taken by an employee or agent of such political subdivision in violation of this
section is void.

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(C) This section shall not be construed to prevent any of the following:

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(1) A duly organized law enforcement agency of a political subdivision from
promulgating and enforcing rules pertaining to firearms, firearm accessories, or
ammunition issued to or used by peace officers in the course of their official
duties.

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(2) An employer from regulating or prohibiting an employee's carrying or
possession of firearms, firearm accessories, or ammunition during and in the
course of the employee's official duties [except as provided in the jurisdiction's
worker protection/parking lot law, if any].

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(3) A court or administrative law judge from hearing and resolving a case or
controversy or issuing an opinion or order on a matter within its jurisdiction.

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(4) The enactment or enforcement of a generally applicable zoning or business
ordinance that includes firearms businesses along with other businesses, provided
that an ordinance designed or enforced to effectively restrict or prohibit the sale,
purchase, transfer, manufacture, or display of firearms, firearm accessories, or
ammunition that is otherwise lawful under the laws of this state is in conflict with
this section and is void.

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(5) A political subdivision from enacting or enforcing rules of operation and use
for any firearm range owned and operated by the political subdivision.

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138 (6) A political subdivision from enacting or enforcing ordinances pertaining to
139 the reckless or negligent discharge of a firearm.
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141 (7) A political subdivision from sponsoring or conducting any firearm-related
142 competition or educational or cultural program and from enacting and enforcing
143 rules for participation in or attendance at such program.
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145 (D) A person adversely affected by any ordinance, resolution, rule, or practice
146 promulgated or enforced in violation of Subsection (B) of this Section may file suit in an
147 appropriate court for declarative and injunctive relief and for all actual and consequential
148 damages attributable to the violation.
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150 (E) Notwithstanding any other provision of law, a party who brings or maintains an
151 action at law or in equity against a political subdivision that has regulated the ownership,
152 possession, storage, carrying, transfer or transportation of firearms, firearm accessories,
153 ammunition or ammunition components in violation of Subsection (B) of this Section
154 shall be entitled to:
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156 (1) Reimbursement of actual damages and reasonable attorney's fees and costs
157 incurred if, within 30 days of commencement of the action but prior to a final
158 determination by a court in favor of either party, the political subdivision rescinds
159 or repeals the ordinance, resolution, rule or practice at issue in the action.
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161 (2) Prejudgment liquidated damages if, after the expiration of the 30-day period in
162 subparagraph (1) but prior to a final determination by a court in favor of either
163 party, the political subdivision rescinds or repeals the ordinance, resolution, rule
164 or practice at issue in the action.
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166 (3) Post-judgment liquidated damages upon a final determination by a court in
167 favor of the party who brings or maintains the action.
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169 **Section 5. {State preemption of local suits pertaining to firearms or ammunition}**
170 The authority to bring suit and right to recover against any firearms or ammunition
171 manufacturer, trade association, or dealer by or on behalf of any governmental unit
172 created by or pursuant to an Act of the (insert name of state legislature) or the
173 constitution, or any department, agency, or authority thereof, for damages, abatement, or
174 injunctive relief resulting from or relating to the lawful design, manufacture, marketing,
175 or sale of firearms or ammunition to the public shall be reserved exclusively to the state.
176 Furthermore, no action against any firearms or ammunition manufacturer, trade
177 association, or dealer shall be brought without the authorization of the (insert name of
178 legislature) by adoption of a concurrent resolution or by enactment of a law. This
179 paragraph shall not prohibit a political subdivision or local government authority from
180 bringing an action against a firearms or ammunition manufacturer or dealer for breach of
181 contract or warranty as to firearms or ammunition purchased by the political subdivision
182 or local government authority. This paragraph shall not prohibit actions for injuries

183 resulting from a firearm malfunction due to defects in design or manufacture.

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185 **Section 6. {Applicability}** Section 4 of this Act applies to an ordinance, rule, resolution
186 or policy adopted by a political subdivision of this state or to official actions taken by an
187 employee or agent of such political subdivision, prior to or on or after the effective date
188 of this Act. The remedies prescribed under Section 4 of this Act shall take effect 90 days
189 after the enactment date of this Act to provide political subdivisions an opportunity to
190 come into compliance with the Act's provisions. Section 5 of t[T]his Act shall apply to
191 any action pending on or brought on or after the date this Act becomes effective.

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193 **Section 7. {Severability clause.}**

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195 **Section 8. {Repealer clause.}**

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197 **Section 9. {Effective date.}**