



Ohio Legislative Service Commission

Bill Analysis

Julie A. Rishel

H.B. 315

128th General Assembly
(As Introduced)

Reps. Morgan and Martin, J. Adams, R. Adams, Boose, Combs, Derickson, Evans, Hall, Hite, Huffman, Jordan, Mandel, Mecklenborg, Ruhl, Uecker, Wachtmann

BILL SUMMARY

- Declares that a personal firearm, firearm accessory, or ammunition that is manufactured commercially or privately in Ohio and that remains within Ohio is not subject to federal laws, rules, or regulations governing interstate commerce.
- Declares that ammunition, firearms, and firearm accessories that are manufactured commercially or privately in Ohio and that remain within Ohio have not travelled in interstate commerce.
- Applies, generally, the bill to ammunition, firearms, and firearm accessories that are manufactured in Ohio from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.
- States that the U.S. Congress's authority to regulate interstate commerce in basic materials does not include the authority to regulate firearms, firearm accessories, and ammunition made in Ohio from basic materials.
- Requires a firearm manufactured in Ohio to have the words "Made in Ohio" clearly stamped on a central metallic part of the firearm, such as the receiver or frame.
- Discusses the General Assembly's authority to enact the bill.

CONTENT AND OPERATION

Ohio firearms, firearm accessories, and ammunition not in interstate commerce

Under the bill, the General Assembly declares that a personal firearm, firearm accessory, or ammunition that is manufactured commercially or privately in Ohio and that remains within Ohio is not subject to federal laws, rules, or regulations governing interstate commerce, including federal laws, rules, and regulations governing the registration of firearms, firearm accessories, or ammunition. The General Assembly also declares that ammunition, firearms, and firearm accessories that are manufactured commercially or privately in Ohio and that remain within Ohio have not travelled in interstate commerce. Except as provided under "**Exceptions**" below, the bill applies to ammunition, firearms, and firearm accessories that are manufactured in Ohio from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. (R.C. 2923.26(B)(1).) (See **COMMENT.**)

Additionally, the General Assembly declares in the bill that generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearm accessories, or ammunition and that the importation of generic and insignificant parts into Ohio and their incorporation into a firearm, firearm accessory, or ammunition manufactured in Ohio does not subject the firearm, firearm accessory, or ammunition to federal regulation. The General Assembly declares that basic materials, including unmachined steel and unshaped wood, are not firearms, firearm accessories, or ammunition and are not subject to the authority of the United States Congress to regulate firearms, firearm accessories, and ammunition. The bill states that the U.S. Congress's authority to regulate interstate commerce in basic materials does not include the authority to regulate firearms, firearm accessories, and ammunition made in Ohio from basic materials. The General Assembly declares that firearm accessories that are imported into Ohio from another state and that are subject to federal laws, rules, and regulations as items in interstate commerce do not subject a firearm to federal laws, rules, and regulations under interstate commerce because the firearm accessory is attached to or used in conjunction with a firearm in Ohio. (R.C. 2923.26(B)(2).) (See **COMMENT.**)

The bill requires a firearm manufactured in Ohio to have the words "Made in Ohio" clearly stamped on a central metallic part of the firearm, such as the receiver or frame (R.C. 2923.26(D)).

Exceptions

The bill does not apply to any of the following:



- (1) A firearm that cannot be carried and used by one person;
- (2) A firearm that has a bore diameter greater than one and one-half inches and that uses smokeless powder, rather than black powder, as a propellant;
- (3) Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm;
- (4) A firearm that discharges two or more projectiles with one activation of the trigger or other firing device (R.C. 2923.26(C)).

General Assembly authority

In the bill, the General Assembly declares that the state's authority to enact the bill is based on the following constitutional provisions:

The Tenth Amendment to the U.S. Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the Constitution and reserves to the state and people of Ohio certain powers as they were understood at the time that Ohio was admitted to statehood in 1803. The guarantee of those powers is a matter of contract between the state and people of Ohio and the United States as of the time that the compact with the United States was agreed upon and adopted by Ohio and the United States in 1803.

The Ninth Amendment to the U.S. Constitution guarantees to the people the rights not granted in the Constitution and reserves to the people of Ohio certain rights as they were understood at the time that Ohio was admitted to statehood in 1803. The guaranty of those rights is a matter of contract between the state and people of Ohio and the United States as of the time that the compact with the United States was agreed upon and adopted by Ohio and the United States in 1803.

The regulation of intrastate commerce is vested in the states under the Ninth and Tenth Amendments to the U.S. Constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition. (See **COMMENT.**)

The Second Amendment to the U.S. Constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Ohio was admitted to statehood in 1803, and the guaranty of the right is a matter of contract between the state and people of Ohio and the United States as of the time that the compact with the United States was agreed upon and adopted by Ohio and the United States in 1803.

Section 4 of Article I of the Ohio Constitution clearly secures to Ohio citizens, and prohibits government interference with, the right of individual Ohio citizens to bear arms. (R.C. 2923.26(E).)

Definitions

The bill defines the following terms:

"Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, including an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including the representations and actions of the individual exercising control over the firearm. (R.C. 2923.26(A)(1), by reference to R.C. 2923.11, not in the bill.)

"Firearm accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of the firearm, including telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination.

"Generic or insignificant parts" includes springs, screws, nuts, and pins.

"Manufactured" means created for functional usefulness from basic materials through forging, casting, machining, or other processes for working materials (R.C. 2923.26(A)).

COMMENT

Federal preemption of a state law refers to a situation in which a state law cannot be enforced, either in whole or in part, because a court has found that a state law is incompatible with federal law. Federal law includes regulations issued by federal agencies. Federal preemption derives its ultimate authority from Article VI, clause 2 of the U.S. Constitution, known as the "Supremacy Clause," which provides that the Constitution and laws of the United States are the "supreme law of the land." Preemption may be explicit in the language of federal law or implied by "field preemption" or "conflict preemption."¹ Field preemption occurs when state law "[r]egulates conduct in a field that Congress intended the Federal Government to

¹ Mark P. Trinchero and Holly Rachel Smith, "Federal Preemption of State Universal Service Regulations Under the Telecommunications Act of 1996," 51 *Fed. Comm. L.J.* 303 (1999), at 308.

occupy exclusively"² Conflict preemption, as the name suggests, occurs when a state law actually conflicts with federal law.³ Conflict may occur when it is impossible to comply with both state and federal law, or when state law frustrates Congressional objectives.⁴

The Commerce Clause of the U.S. Constitution (Art. 1, sec. 8, cl. 3) states that "Congress shall have the power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Interstate commerce is an area in which the Constitution is clear about federal supremacy. Therefore, when the subject matter of a state law is interstate commerce, state law may be preempted in the manner outlined above. In addition, even when Congress has not acted through legislation, courts have invalidated state law on the grounds that the Commerce Clause prevents the states from enforcing protectionist regulations or placing an undue burden on interstate commerce.⁵ This line of legal reasoning often is referred to as the "negative" or "dormant" implication of the Commerce Clause.

The federal laws requiring the registration of firearms, firearm accessories, or ammunition (18 U.S.C. 921 *et seq.*) specifically state:

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together (18 U.S.C.A. 927).

The U.S. Supreme Court and several lower courts have held that various aspects of the federal laws requiring the registration of firearms, firearm accessories, or ammunition apply to firearms, firearm accessories, or ammunition within intrastate commerce in addition to those firearms, firearm accessories, or ammunition that are in interstate commerce (see, e.g., *Barrett v. U.S.* (1976), 423 U.S. 212, 218-220, holding that the provision of law prohibiting felons from receiving firearms applies to guns in intrastate commerce, and *U.S. v. Day* (C.A. 6, 1973), 476 F.2d 562, 565, holding that those

² *English v. General Electric Co.* (1990), 496 U.S. 72, at 78-79.

³ *Id.*

⁴ Trinchero and Smith, at 308.

⁵ 15A *Am. Jur.* 2d Commerce § 39.

laws are not limited to interstate commerce). Thus, the bill may conflict with federal law.

HISTORY

ACTION	DATE
Introduced	10-16-09

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