

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

**H.B. 886**  
**Apr 14, 2015**  
**HOUSE PRINCIPAL CLERK**

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HOUSE DRH20275-LH-161 (04/01)

Short Title: Second Amendment Preservation Act. (Public)

Sponsors: Representative Setzer.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT THE RIGHT TO KEEP AND BEAR ARMS WITHIN THE STATE  
3 OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** This Act shall be known as the Second Amendment Preservation  
6 Act.

7 **SECTION 2.** The General Assembly finds and declares the following:

- 8 (1) The General Assembly is firmly resolved to support and defend the United  
9 States Constitution against every aggression, either foreign or domestic, and  
10 oppose every infraction of the principles that constitute the basis of the union  
11 of the states because only a faithful observance of those principles can  
12 secure the nation's existence and the public's happiness.
- 13 (2) Acting through the United States Constitution, the people of the several  
14 states created the federal government to be the people's agent in the exercise  
15 of a few defined powers, while reserving to the state governments the power  
16 to legislate on matters that concern the lives, liberties, and properties of  
17 citizens in the ordinary course of affairs.
- 18 (3) The limitation of the federal government's power is affirmed under the Tenth  
19 Amendment to the United States Constitution, which defines the total scope  
20 of federal power as being that which has been delegated by the people to the  
21 federal government, and all power not delegated to the federal government  
22 in the United States Constitution is reserved to the states or to the people.
- 23 (4) If the federal government assumes powers that the people did not grant to  
24 the federal government in the United States Constitution, the federal  
25 government's acts are unauthoritative, void, and of no force.
- 26 (5) The several states respect the proper role of the federal government, but  
27 reject the proposition that such respect requires unlimited submission. If the  
28 federal government, created by compact among the states, was the exclusive  
29 or final judge of the extent of the powers granted to the federal government  
30 by the states through the constitution, the federal government's discretion,  
31 and not the constitution, would necessarily become the measure of those  
32 powers. To the contrary, as in all other cases of compacts among powers  
33 having no common judge, each party has an equal right to judge whether  
34 infractions of the compact have occurred, as well as to determine the mode  
35 and measure of redress. Although the states have granted supremacy to laws  
36 and treaties made pursuant to the powers granted in the constitution, that



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1 supremacy does not extend to various federal statutes, executive orders,  
2 administrative orders, court orders, rules, regulations, and other actions that  
3 restrict or prohibit the manufacture, ownership, and use of firearms, firearm  
4 accessories, or firearm ammunition exclusively within the borders of North  
5 Carolina. Such federal actions exceed the powers granted to the federal  
6 government except to the extent that they are necessary and proper for  
7 governing the United States Armed Forces or militia forces actively  
8 employed in the service of the Armed Forces.

9 (6) The people of the several states have, in Article I, Section 8, of the United  
10 States Constitution, given Congress the power "to regulate Commerce with  
11 foreign Nations, and among the several States," but "regulating commerce"  
12 does not include the power to limit citizens' right to keep and bear arms in  
13 defense of the citizens' families, neighbors, persons, or property, or to dictate  
14 as to what type of arms and accessories law-abiding, mentally competent  
15 North Carolinians may buy, sell, exchange, or otherwise possess within the  
16 borders of this State.

17 (7) The people of the several states have, in Article I, Section 8, of the United  
18 States Constitution, also granted Congress the power to "lay and collect  
19 taxes, duties, imposts and excises, to pay the debts and provide for the  
20 common Defence and general Welfare of the United States" and to "make all  
21 laws which shall be necessary and proper for carrying into execution the ...  
22 powers vested by [the] constitution in the government of the United States,  
23 or in any department or officer thereof." These constitutional provisions  
24 merely identify the means by which the federal government may execute the  
25 federal government's limited powers and ought not to be construed to grant  
26 unlimited powers because to do so would destroy the carefully constructed  
27 equilibrium between the federal and state governments. Consequently, the  
28 General Assembly rejects any claim that the taxing and spending powers of  
29 Congress can be used to diminish in any way the right of the people to keep  
30 and bear arms.

31 (8) The people of North Carolina have vested the General Assembly with the  
32 authority to regulate the manufacture, possession, exchange, and use of  
33 firearms within the borders of this State, subject only to the limits imposed  
34 by the Second Amendment to the United States Constitution and Section 30  
35 of Article I of the North Carolina Constitution.

36 (9) The General Assembly strongly encourages responsible gun ownership,  
37 including parental supervision of minors in the proper use, storage, and  
38 ownership of all firearms, the prompt reporting of stolen firearms, and the  
39 proper enforcement of all State gun laws. The General Assembly condemns  
40 any unlawful transfer of firearms and the use of any firearm in any unlawful  
41 activity.

42 **SECTION 3.** Chapter 1 of the General Statutes is amended by adding a new  
43 Article to read as follows:

44 "Article 53.

45 "Protection of Right to Keep and Bear Arms.

46 "§ 1-640. Definitions.

47 The following definitions apply in this article:

- 48 (1) Government agency. – North Carolina or a municipality or other political  
49 subdivision of this State; and any agency of this State or a municipality or  
50 other political subdivision of this State, including a department, bureau,

1 board, commission, office, agency, council, or public institution of higher  
2 education.

3 (2) Law-abiding citizen. – An individual who is legally present in this State, and  
4 may, under the laws of this State, possess a firearm.

5 (3) Right to keep and bear arms. – The right guaranteed by the Second  
6 Amendment to the United States Constitution and Section 30 of Article I of  
7 the North Carolina Constitution.

8 **"§ 1-641. Certain federal law regulating firearms invalid.**

9 A federal law, including a statute, an executive, administrative, or court order, or a rule, that  
10 infringes on a law-abiding citizen's right to keep and bear arms under the Second Amendment  
11 to the United States Constitution or Section 30 of Article I of the North Carolina Constitution,  
12 is invalid and not enforceable in this State. A federal law that infringes on a law-abiding  
13 citizen's right to keep and bear arms includes a law that does any of the following:

14 (1) Imposes a tax, fee, or stamp on a firearm, firearm accessory, or firearm  
15 ammunition that is not common to all other goods and services and may be  
16 reasonably expected to create a chilling effect on the purchase or ownership  
17 of those items by a law-abiding citizen.

18 (2) Requires the registration or tracking of a firearm, firearm accessory, or  
19 firearm ammunition or the owners of those items that may be reasonably  
20 expected to create a chilling effect on the purchase or ownership of those  
21 items by a law-abiding citizen.

22 (3) Prohibits the possession, ownership, use, or transfer of a firearm, firearm  
23 accessory, or firearm ammunition by a law-abiding citizen.

24 (4) Orders the confiscation of a firearm, firearm accessory, or firearm  
25 ammunition from a law-abiding citizen.

26 **"§ 1-642. Duties of courts and law enforcement agencies; enforcement by government**  
27 **employees, officials, and agencies prohibited.**

28 (a) Each State court and law enforcement agency of this State shall protect a  
29 law-abiding citizen's right to keep and bear arms.

30 (b) A government agency or an employee or an official of a government agency may  
31 not enforce a federal law described by G.S. 1-641.

32 **"§ 1-643. Remedies.**

33 (a) A person who knowingly violates G.S. 1-642(b) is liable under this section to a  
34 law-abiding citizen whose right to keep and bear arms was infringed by the person.

35 (b) A law-abiding citizen described by subsection (a) of this section may obtain any of  
36 the following remedies:

37 (1) Declaratory relief under Article 26 of Chapter 1 of the General Statutes.

38 (2) Injunctive relief to prevent the threatened violation or continued violation.

39 (3) Compensatory damages for pecuniary and nonpecuniary losses.

40 (4) Reasonable attorneys' fees, court costs, and other reasonable expenses  
41 required in bringing the action.

42 **"§ 1-644. Notice; right to accommodate.**

43 (a) A claimant may not bring an action to assert a claim under this article unless, 60  
44 days before bringing the action, the claimant gives to the person who violated G.S. 1-642(b), by  
45 certified mail, return receipt requested, written notice (i) that the person has taken or proposes  
46 to take an enforcement action infringing on the claimant's right to keep and bear arms and (ii)  
47 of the particular enforcement action giving rise to the infringement.

48 (b) Notwithstanding subsection (a) of this section, a claimant may, within the 60-day  
49 period established by subsection (a) of this section, bring an action for declaratory or injunctive  
50 relief and associated attorneys' fees, court costs, and other reasonable expenses, if all of the  
51 following criteria are satisfied:

1           (1) Infringement on the claimant's right to keep and bear arms is imminent.

2           (2) The claimant was not informed and did not otherwise have knowledge of the  
3           enforcement action in time to reasonably provide the notice.

4           (c) A person who receives a notice under subsection (a) of this section may cure the  
5 infringement on the claimant's right to keep and bear arms.

6           (d) A claimant with respect to whom an infringement on the claimant's right to keep and  
7 bear arms has been cured may not bring an action under G.S. 1-643.

8 **"§ 1-645. One-year limitations period.**

9           (a) A claimant must bring an action to assert a claim for damages under this Article not  
10 later than one year after the date the claimant knew or should have known of the infringement  
11 on the claimant's right to keep and bear arms.

12           (b) Mailing notice under G.S. 1-644 tolls the limitations period established under this  
13 section until the 75th day after the date on which the notice was mailed.

14 **"§ 1-646. Sovereign and governmental immunity waived; no official immunity.**

15           (a) Sovereign and governmental immunity to suit and from liability is waived and  
16 abolished to the extent of liability created by G.S. 1-643, and a claimant may sue a government  
17 agency for damages allowed by that section.

18           (b) The affirmative defense of official immunity is not available to an employee or  
19 official sued under G.S. 1-643.

20           (c) Notwithstanding subsection (a) of this section, this Article does not waive or abolish  
21 sovereign immunity to suit and from liability under the Eleventh Amendment to the United  
22 States Constitution."

23           **SECTION 4.** This act applies only to an infringement on the right to keep and bear  
24 arms that occurs on or after the effective date of this act.

25           **SECTION 5.** This act becomes effective October 1, 2015.