

HB 685-FN - AS INTRODUCED

2015 SESSION

15-0863  
04/03

HOUSE BILL

***685-FN***

AN ACT

prohibiting a state agency, state employee, or political subdivision from enforcing any federal law regarding a firearm, firearm accessory, or ammunition.

SPONSORS:

Rep. Hoell, Merr 23

COMMITTEE:

Criminal Justice and Public Safety

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ANALYSIS

This bill prohibits a state agency, state employee, or political subdivision from enforcing any federal law regarding a firearm, firearm accessory, or ammunition.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT prohibiting a state agency, state employee, or political subdivision from enforcing any federal law regarding a firearm, firearm accessory, or ammunition.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Legislative Findings. The general court finds:

2 I. That the right to keep and bear arms is a fundamental individual right that shall not be  
3 infringed.

4 II. That it is the intent of the Legislature in enacting this act to protect New Hampshire  
5 employees, including law enforcement officers, from being directed, through federal executive orders,  
6 agency orders, statutes, laws, rules, or regulations adopted on or after the effective date of this act, to  
7 violate their oath of office and individual rights affirmed under the Second Amendment to the  
8 Constitution for the United States and the New Hampshire Constitution.

9 III. That pursuant to and in furtherance of the principles of federalism enshrined in the  
10 Constitution for the United States, the federal government may not commandeer this state's officers,  
11 agents, or employees to participate in the enforcement or facilitation of any federal program not  
12 expressly required by the Constitution for the United States.

13 IV. That this right to be free from the commandeering hand of the federal government has  
14 been most notably recognized by the United States Supreme Court in Printz v. United States when  
15 the Court held: The Federal Government may neither issue directives requiring the States to  
16 address particular problems, nor command the States' officers, or those of their political subdivisions,  
17 to administer or enforce a federal regulatory program.

18 V. That the anti-commandeering principles recognized by the United States Supreme Court  
19 in Printz v. United States are predicated upon the advice of James Madison, who in Federalist #46  
20 advised "a refusal to cooperate with officers of the Union" in response to either unconstitutional  
21 federal measures or constitutional but unpopular federal measures.

22 2 New Subdivision; Pistols and Revolvers; Firearms Enforcement Prohibitions. Amend RSA 159  
23 by inserting after section 26 the following new subdivision:

24 Firearms Prohibitions

25 159:27 Firearms; Enforcement Prohibitions.

26 I. Except as provided in paragraph II of this section, no state agency, political subdivision, or  
27 employee of a state agency or political subdivision acting in his or her official capacity shall:

28 (a) Knowingly participate in the enforcement of any federal act, law, order, rule, or  
29 regulation issued, enacted, or promulgated on or after the effective date of this section regarding a  
30 firearm, firearm accessory, or ammunition; or

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1           (b) Utilize any assets, state funds, or funds allocated by the state to local entities on or  
2 after the effective date of this section, in whole or in part, to engage in any activity that aids a  
3 federal agency, federal agent, or corporation providing services to the federal government in the  
4 enforcement or any investigation pursuant to the enforcement of any federal act, law, order, rule, or  
5 regulation issued, enacted or promulgated on or after the effective date of this section regarding a  
6 firearm, firearm accessory, or ammunition.

7           II. This section shall not apply to a state agency, political subdivision, or employee of a state  
8 agency or political subdivision acting pursuant to a court order.

9           159:28 Penalties.

10          I. A state agent, state employee, or an employee of any political subdivision who knowingly  
11 violates the provisions of RSA 159:27 shall be fined not more than \$3,000 for a first offense and shall  
12 be guilty of a class A misdemeanor for a second or subsequent offense. All fines imposed under this  
13 section shall be paid into the general fund.

14          II. No political subdivision shall receive state funds if the political subdivision adopts a rule,  
15 order, ordinance, or policy under which the political subdivision would violate the provisions of  
16 RSA 159:27. The prohibition on receipt of state funds shall apply to the fiscal year following the year  
17 in which a final judicial determination in an action brought under this section is made that the  
18 political subdivision has knowingly required actions which violate the provisions of RSA 159:27.

19          159:29 Severability. If any provision of this subdivision or the application thereof to any person  
20 or circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
21 the subdivision which can be given effect without the invalid provision or application, and to this end  
22 the provisions of this subdivision are declared to be severable.

23          3 Effective Date. This act shall take effect January 1, 2016.

**HB 685-FN FISCAL NOTE**

AN ACT prohibiting a state agency, state employee, or political subdivision from enforcing any federal law regarding a firearm, firearm accessory, or ammunition.

**FISCAL IMPACT:**

The Judicial Branch, Department of Administrative Services, Department of Justice, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state expenditures and decrease state revenue and county expenditures by an indeterminable amount in FY 2016 and each year thereafter. There will be no impact on local expenditures or county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill prohibits a state agency, state employee, or political subdivision from enforcing any federal or state law regarding a personal firearm, firearm accessory, or ammunition unless acting pursuant to a court order. The Branch states this bill adds a penalty section in RSA 159:28 to provide that a first offense would be a violation with a fine of not more than \$3,000 and that a second or subsequent offense would be a class A misdemeanor. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. The Branch has provided the potential costs associated with the penalties contained in this bill, where they can be determined. However, the Branch states the potential \$3,000 fine included in this bill is more serious than the standard violation level offense which is \$1,000. See the following table for estimated costs:

	FY 2016	FY 2017
<b><u>Judicial Branch*</u></b>		
Violation Level Offense	\$47	\$49
Class A Misdemeanor	\$69	\$71
Simple Criminal Case	\$271	\$284
Appeals	Varies	Varies
*It should be noted average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		

The Department of Administrative services states this bill may reduce state revenues by an indeterminable amount. The Department states that the principles of cost-claiming generally note that entities receiving federal grants must adhere to federal requirements. Not doing so may result in the withholding of payments, disallowance of certain costs, suspension of awards, withholding of future awards, and other remedies. Further, the Department states this bill does not specify what federal provisions or available sources of funding agencies may be required to disregard. The Department is unable to estimate the extent to which state revenues may be reduced as a result of loss of federal funds, penalties, or lapses of appropriation.

The Department of Justice states it has no method to estimate how many complaints of violations would be received and investigated or referred to another prosecuting agency. Consequently, the fiscal impact is indeterminable.

The New Hampshire Association of Counties states that to the extent fewer individuals are charged and convicted of any federal or state law regarding firearms, county prosecutor and jail costs would decrease by an indeterminable amount.

The Judicial Council states this bill will have no fiscal impact.