

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 2781

By: Hardin (David)

AS INTRODUCED

An Act relating to firearms; creating the Second Amendment Preservation Act; stating findings and declarations; considering certain actions as infringing on the right to keep and bear arms; invalidating, not recognizing and rejecting certain actions by the federal government and state government; declaring said actions null and void and of no effect; directing courts and law enforcement agencies to protect certain rights of law-abiding citizens; preventing public officers or employees from having authority to enforce certain federal actions; making entities or persons liable for knowingly depriving citizens of certain rights; providing for the award of attorney fees and costs; deeming law enforcement officers permanently ineligible to serve for knowingly taking certain actions; prohibiting the employment of law enforcement officers deemed ineligible to serve; providing for declaratory judgments under certain circumstances; providing for the termination of law enforcement officers pursuant to certain determination made by the court; directing payment of costs and attorney fees to certain entity; affirming appeal or remediation rights; defining term; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2201 of Title 25, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Second
5 Amendment Preservation Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2202 of Title 25, unless there
8 is created a duplication in numbering, reads as follows:

9 The Oklahoma Legislature finds and declares that:

10 1. The Legislature of the State of Oklahoma is firmly resolved
11 to support and defend the United States Constitution against every
12 aggression, whether foreign or domestic, and is duty bound to oppose
13 every infraction of those principles which constitute the basis of
14 the Union of the States because only a faithful observance of those
15 principles can secure the existence of the nation and happiness of
16 the public;

17 2. Acting through the United States Constitution, the people of
18 the several states created the federal government to be their agent
19 in the exercise of a few defined powers, while reserving to the
20 state governments the power to legislate on matters which concern
21 the lives, liberties and properties of citizens in the ordinary
22 course of affairs;

23 3. The limitation of the power of the federal government is
24 affirmed under the Tenth Amendment to the United States

1 Constitution, which defines the total scope of federal power as
2 being that which has been delegated by the people of the several
3 states to the federal government, and all power not delegated to the
4 federal government in the United States Constitution is "reserved to
5 the states respectively, or to the people themselves";

6 4. Whenever the federal government assumes powers that the
7 people did not grant it in the United States Constitution, its acts
8 are unauthoritative, void and of no force;

9 5. The several states of the United States of America respect
10 the proper role of the federal government, but reject the
11 proposition that such respect requires unlimited submission. If the
12 government, created by a compact among the states, was the exclusive
13 or final judge of the extent of the powers granted to it by the
14 states through the United States Constitution, the discretion of the
15 federal government, and not the United States Constitution, would
16 necessarily become the measure of those powers. To the contrary, as
17 in all other cases of compacts among powers having no common judge,
18 each party has an equal right to judge for itself as to if
19 infractions of the compact have occurred, as well as to determine
20 the mode and measure of redress. Although the several states have
21 granted supremacy to laws and treaties made under the powers granted
22 in the United States Constitution, such supremacy does not extend to
23 various federal statutes, executive orders, administrative orders,
24 court orders, rules, regulations or other actions which restrict or

1 prohibit the manufacture, ownership and use of firearms, firearm
2 accessories or ammunition exclusively within the borders of
3 Oklahoma. Such statutes, executive orders, administrative orders,
4 court orders, rules, regulations and other actions exceed the powers
5 granted to the federal government except to the extent they are
6 necessary and proper for governing and regulating land and naval
7 forces of the United States or for organizing, arming and
8 disciplining of militia forces actively employed in the service of
9 the United States Armed Forces;

10 6. The people of the several states have given Congress the
11 power "to regulate commerce with foreign nations, and among the
12 several states", but "regulating commerce" does not include the
13 power to limit citizens' rights to keep and bear arms in defense of
14 their families, neighbors, persons or property, or to dictate as to
15 what sort of arms and accessories law-abiding Oklahomans may buy,
16 sell, exchange or otherwise possess within the borders of this
17 state;

18 7. The people of the several states have also granted Congress
19 the power "to lay and collect taxes, duties, imposts, and excises,
20 and to pay the debts, and provide for the common defense and general
21 welfare of the United States" and "to make all laws which shall be
22 necessary and proper for carrying into execution the foregoing
23 powers, and all other powers vested by this Constitution in the
24 government of the United States, or in any department or office

1 thereof". These constitutional provisions merely identify the means
2 by which the federal government may execute its limited powers and
3 shall not be so construed as to grant unlimited power because to do
4 so would be to destroy the carefully constructed equilibrium between
5 the federal and state governments. Consequently, the Legislature
6 rejects any claim that the taxing and spending powers of Congress
7 can be used to diminish in any way the right of the people to keep
8 and bear arms;

9 8. The people of Oklahoma have vested the Legislature with the
10 authority to regulate the manufacture, possession, exchange and use
11 of firearms within the borders of this state, subject only to the
12 limits imposed by the Second Amendment to the Constitution of the
13 United States and the Oklahoma Constitution; and

14 9. The Legislature of the State of Oklahoma strongly promotes
15 responsible gun ownership, including parental supervision of minors
16 in the proper use, storage and ownership of all firearms, the prompt
17 reporting of stolen firearms and the proper enforcement of all state
18 gun laws. The Legislature of the State of Oklahoma hereby condemns
19 any unlawful transfer of firearms and the use of any firearm in any
20 criminal or unlawful activity.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2203 of Title 25, unless there
23 is created a duplication in numbering, reads as follows:

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1 The following federal acts, laws, executive orders,
2 administrative orders, court orders, rules and regulations shall be
3 considered infringements on the rights of citizens to keep and bear
4 arms, as guaranteed by the Second Amendment to the Constitution of
5 the United States and Article II, Section 26 of the Constitution of
6 Oklahoma, within the borders of this state including, but not
7 limited to:

8 1. Any tax, levy, fee or stamp imposed on firearms, firearm
9 accessories or ammunition not common to all other goods and services
10 which might reasonably be expected to create a chilling effect on
11 the purchase or ownership of those items by law-abiding citizens;

12 2. Any registering or tracking of firearms, firearm accessories
13 or ammunition which might reasonably be expected to create a
14 chilling effect on the purchase or ownership of those items by law-
15 abiding citizens;

16 3. Any registering or tracking of the owners of firearms,
17 firearm accessories or ammunition which might reasonably be expected
18 to create a chilling effect on the purchase or ownership of those
19 items by law-abiding citizens;

20 4. Any act forbidding the possession, ownership or use or
21 transfer of a firearm, firearm accessory or ammunition by law-
22 abiding citizens; and

23 5. Any act ordering the confiscation of firearms, firearm
24 accessories or ammunition from law-abiding citizens.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2204 of Title 25, unless there
3 is created a duplication in numbering, reads as follows:

4 A. All federal acts, laws, executive orders, administrative
5 orders, court orders, rules and regulations, regardless if enacted
6 before or after the provisions of Sections 1 through 9 of this act,
7 which infringe on the rights of citizens to keep and bear arms as
8 guaranteed by the Second Amendment to the Constitution of the United
9 States and Article II, Section 26 of the Constitution of Oklahoma,
10 shall be invalid in this state, shall not be recognized by this
11 state, shall be specifically rejected by this state and shall be
12 considered null and void and of no effect in this state.

13 B. All state acts, laws, executive orders, administrative
14 orders, court orders, rules and regulations and any order,
15 ordinance, resolution or regulation by any county, municipality or
16 other political subdivision of this state, regardless if enacted
17 before or after the provisions of Sections 1 through 9 of this act,
18 which infringe on the rights of citizens to keep and bear arms as
19 guaranteed by the Second Amendment to the Constitution of the United
20 States and Article II, Section 26 of the Constitution of Oklahoma,
21 shall be invalid in this state, shall not be recognized by this
22 state, shall be specifically rejected by this state and shall be
23 considered null and void and of no effect in this state.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2205 of Title 25, unless there
3 is created a duplication in numbering, reads as follows:

4 It shall be the duty of the courts and law enforcement agencies
5 of this state to protect the rights of law-abiding citizens to keep
6 and bear arms within the borders of this state and to protect these
7 rights from the infringements provided under Section 3 of this act.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2206 of Title 25, unless there
10 is created a duplication in numbering, reads as follows:

11 No person, including any public officer or employee of this
12 state or any political subdivision of this state, shall have the
13 authority to enforce or attempt to enforce any federal or state
14 acts, laws, executive orders, administrative orders, court orders,
15 rules, regulations, ordinances or resolutions infringing on the
16 right to keep and bear arms as described under Section 2 of this
17 act.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2207 of Title 25, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Any entity or person who acts knowingly, as defined by
22 Section 96 of Title 21 of the Oklahoma Statutes, to violate the
23 provisions of Section 6 of this act or otherwise knowingly deprives
24 a citizen of Oklahoma of the rights or privileges ensured by the

1 Second Amendment to the Constitution of the United States or Article
2 II, Section 26 of the Constitution of Oklahoma, while acting under
3 the color of any state or federal law, shall be liable to the
4 injured party in an action at law, suit in equity or other proper
5 proceeding for redress.

6 B. In such actions, the court may award the prevailing party,
7 other than the State of Oklahoma or any political subdivision of the
8 state, reasonable attorney fees and costs.

9 C. Sovereign, official or qualified immunity shall not be an
10 affirmative defense in such actions.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2208 of Title 25, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Any person, while acting as an official, agent, employee or
15 deputy of the government of the United States or while otherwise
16 acting under the color of federal law while within the borders of
17 this state, who knowingly, as defined by Section 96 of Title 21 of
18 the Oklahoma Statutes:

19 1. Enforces or attempts to enforce any of the infringements
20 identified in Section 3 of this act; or

21 2. Gives material aid and support to the efforts of others who
22 enforce or attempt to enforce any of the infringements identified in
23 Section 3 of this act,

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1 shall be permanently ineligible to serve as a law enforcement
2 officer or to supervise law enforcement officers for the state or
3 any political subdivision of the state.

4 B. Neither the state nor any political subdivision of the state
5 shall employ as a law enforcement officer or supervisor of law
6 enforcement officers any person who is ineligible to serve in such
7 capacity under this section.

8 C. Any person residing in or conducting business in a
9 jurisdiction who believes that a law enforcement officer or
10 supervisor of law enforcement officers of such jurisdiction has
11 taken action that would render that person ineligible under this
12 section to serve in such capacity shall have standing to pursue an
13 action for declaratory judgment in the district court of the county
14 in which the action allegedly occurred, or in the district court of
15 Oklahoma County, with respect to the employment eligibility of the
16 law enforcement officer or the supervisor of law enforcement
17 officers under this section.

18 D. If a court determines that a law enforcement officer or
19 supervisor of law enforcement officers has taken any action that
20 would render such law enforcement officer ineligible to serve in
21 that capacity under this section:

22 1. The law enforcement officer or supervisor of law enforcement
23 officers shall immediately be terminated from his or her position;
24 and

1 2. The jurisdiction that had employed the ineligible law
2 enforcement officer or supervisor of law enforcement officers shall
3 be required to pay the court costs and attorney fees associated with
4 the declaratory judgment action that resulted in the finding of
5 ineligibility.

6 E. Nothing in this section shall preclude a person's right of
7 appeal or remediation.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2209 of Title 25, unless there
10 is created a duplication in numbering, reads as follows:

11 For the purposes of Sections 2 through 8 of this act, the term
12 "law-abiding citizen" shall mean a person who is not otherwise
13 precluded under state law from possessing a firearm and shall not be
14 construed to include anyone who is not legally present in the United
15 States or the State of Oklahoma.

16 SECTION 10. This act shall become effective November 1, 2020.

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18 57-2-9017 GRS 11/07/19

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