

Senate File 2002 - Introduced

SENATE FILE 2002

BY NUNN

A BILL FOR

1 An Act creating the second amendment preservation Act, and
2 providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 724A.1 Short title.

2 This chapter may be cited and referred to as the "*Second*
3 *Amendment Preservation Act*".

4 Sec. 2. NEW SECTION. 724A.2 Definition.

5 As used in this chapter, "*law-abiding citizen*" means a person
6 who is not otherwise precluded under state law from possessing
7 a firearm and shall not be construed to include anyone who is
8 not legally present in the United States or the state of Iowa.

9 Sec. 3. NEW SECTION. 724A.3 Legislative findings.

10 The general assembly finds and declares the following:

11 1. The general assembly is firmly resolved to support and
12 defend the Constitution of the United States against every
13 aggression, whether foreign or domestic, and is duty-bound to
14 oppose every infraction of those principles that constitute the
15 basis of the United States because only a faithful observance
16 of those principles can secure the nation's existence and the
17 public happiness.

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

24 3. The limitation of the federal government's power is
25 affirmed under the tenth amendment to the Constitution of the
26 United States, which defines the total scope of federal power
27 as being that which has been delegated by the people of the
28 several states to the federal government, and all power not
29 delegated to the federal government in the Constitution of the
30 United States is reserved to the states respectively or to the
31 people themselves.

32 4. If the federal government assumes powers that the people
33 did not grant it in the Constitution of the United States, its
34 acts are unauthoritative, void, and of no force.

35 5. The several states of the United States respect

1 the proper role of the federal government but reject the
2 proposition that such respect requires unlimited submission.
3 If the government, created by a compact among the states,
4 was the exclusive or final judge of the extent of the powers
5 granted to it by the states through the Constitution of the
6 United States, the federal government's discretion, and not
7 the Constitution of the United States, would necessarily
8 become the measure of those powers. To the contrary, as in
9 all other cases of compacts among powers having no common
10 judge, each party has an equal right to judge for itself as to
11 whether infractions of the compact have occurred, as well as
12 to determine the mode and measure of redress. Although the
13 several states have granted supremacy to laws and treaties made
14 under the powers granted in the Constitution of the United
15 States, such supremacy does not extend to various federal
16 statutes, executive orders, administrative orders, court
17 orders, rules, regulations, or other actions that collect data
18 or restrict or prohibit the manufacture, ownership, and use
19 of firearms, firearm accessories, or ammunition exclusively
20 within the borders of Iowa. Such statutes, executive orders,
21 administrative orders, court orders, rules, regulations,
22 and other actions exceed the powers granted to the federal
23 government except to the extent they are necessary and proper
24 for governing and regulating the United States armed forces
25 or for organizing, arming, and disciplining militia forces
26 actively employed in the service of the United States armed
27 forces.

28 6. The people of the several states have given the United
29 States Congress the power "to regulate commerce with foreign
30 nations, and among the several states", but "regulating
31 commerce" does not include the power to limit citizens' right
32 to keep and bear arms in defense of their families, neighbors,
33 persons, or property, or to dictate what sort of arms and
34 accessories law-abiding Iowans may buy, sell, exchange, or
35 otherwise possess within the borders of this state.

1 7. The people of the several states have also granted the
2 United States Congress the power "to lay and collect taxes,
3 duties, imposts and excises, to pay the debts and provide for
4 the common defense and general welfare of the United States"
5 and "to make all laws which shall be necessary and proper for
6 carrying into execution" the powers vested by the Constitution
7 of the United States "in the government of the United States,
8 or in any department or officer thereof". These constitutional
9 provisions merely identify the means by which the federal
10 government may execute its limited powers and shall not be
11 construed to grant unlimited power because to do so would be
12 to destroy the carefully constructed equilibrium between the
13 federal and state governments. Consequently, the general
14 assembly rejects any claim that the taxing and spending powers
15 of the United States Congress may be used to diminish in any
16 way the right of the people to keep and bear arms.

17 8. The general assembly finds that the federal excise tax
18 rate on arms and ammunition in effect prior to January 1,
19 2021, which funds programs under the Act of Congress described
20 in section 456A.27, does not have a chilling effect on the
21 purchase or ownership of such arms and ammunition.

22 9. The people of Iowa have vested the general assembly
23 with the authority to regulate the manufacture, possession,
24 exchange, and use of firearms firearm accessories, or
25 ammunition within the borders of this state, subject only to
26 the limits imposed by the second amendment to the Constitution
27 of the United States and the Constitution of the State of Iowa.

28 10. The general assembly of the state of Iowa strongly
29 promotes responsible firearm ownership, including parental
30 supervision of minors in the proper use, storage, and ownership
31 of all firearms; the prompt reporting of stolen firearms; and
32 the proper enforcement of all state firearm laws. The general
33 assembly of the state of Iowa hereby condemns any unlawful
34 transfer of firearms and the use of any firearm in any criminal
35 or unlawful activity.

1 Sec. 4. NEW SECTION. **724A.4 Federal infringements on the**
2 **right to keep and bear arms.**

3 Federal infringements on the people's right to keep and bear
4 arms, as guaranteed by the second amendment to the Constitution
5 of the United States, within the borders of this state include
6 but shall not be limited to the following federal acts, laws,
7 executive orders, administrative orders, court orders, rules,
8 and regulations:

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

14 2. Any registering or tracking of firearms, firearm
15 accessories, or ammunition that might reasonably be expected
16 to create a chilling effect on the purchase or ownership of
17 firearms, firearm accessories, or ammunition by law-abiding
18 citizens.

19 3. Any registering or tracking of the owners of firearms,
20 firearm accessories, or ammunition that might reasonably
21 be expected to create a chilling effect on the purchase or
22 ownership of firearms, firearm accessories, or ammunition by
23 law-abiding citizens.

24 4. Any act forbidding the possession, ownership, use, or
25 transfer of firearms, firearm accessories, or ammunition by
26 law-abiding citizens.

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

29 Sec. 5. NEW SECTION. **724A.5 Federal infringement void.**

30 All federal acts, laws, executive orders, administrative
31 orders, court orders, rules, and regulations, regardless if
32 enacted before or after the provisions this chapter, that
33 infringe on the people's right to keep and bear arms as
34 guaranteed by the second amendment to the Constitution of the
35 United States shall be invalid in this state, shall not be

1 recognized by this state, shall be specifically rejected by
2 this state, and shall have no effect in this state.

3 Sec. 6. NEW SECTION. **724A.6 Protection of right to keep and**
4 **bear arms.**

5 It shall be the duty of the courts and law enforcement
6 agencies of this state to protect the rights of law-abiding
7 citizens to keep and bear arms within the borders of this state
8 and to protect these rights from the infringements described
9 in section 724A.4.

10 Sec. 7. NEW SECTION. **724A.7 Enforcement of infringement of**
11 **right to keep and bear arms prohibited.**

12 No person, including any public officer or employee of this
13 state or any political subdivision of this state, shall have
14 the authority to enforce or attempt to enforce any federal
15 acts, laws, executive orders, administrative orders, court
16 orders, rules, regulations, statutes, or ordinances infringing
17 on the right to keep and bear arms as described in section
18 724A.4. Nothing in this chapter shall be construed to prohibit
19 Iowa officials from accepting aid from federal officials in an
20 effort to enforce Iowa laws.

21 Sec. 8. NEW SECTION. **724A.8 Liability for violation —**
22 **actions for violations — attorney fees.**

23 1. *a.* Any political subdivision or law enforcement agency
24 that employs a law enforcement officer who acts knowingly to
25 violate the provisions of this chapter while acting under color
26 of any state or federal law shall be liable to the injured
27 party in an action at law, suit in equity, or other proper
28 proceeding for redress, and subject to a civil penalty of fifty
29 thousand dollars per violation.

30 *b.* Any person injured under this subsection shall have
31 standing to pursue an action for injunctive relief in the
32 district court of the county in which the action allegedly
33 occurred or in the district court of Polk county. The court
34 shall hold a hearing on the motion for a temporary restraining
35 order or a preliminary injunction within thirty days of service

1 of the petition.

2 2. Any political subdivision or law enforcement agency that
3 knowingly employs an individual acting or who previously acted
4 as an official, agent, employee, or deputy of the government
5 of the United States, or otherwise acted under the color of
6 federal law within the borders of this state, who has knowingly
7 enforced or attempted to enforce any of the infringements
8 identified in section 724A.4, or has knowingly given material
9 aid and support to the efforts of another who enforces or
10 attempts to enforce any of the infringements identified in
11 section 724A.4, shall be subject to a civil penalty of fifty
12 thousand dollars per such employee hired by the political
13 subdivision or law enforcement agency. Any person residing
14 or conducting business in a jurisdiction who believes that an
15 individual has taken action in that jurisdiction that would
16 violate the provisions of this subsection shall have standing
17 to pursue an action for injunctive relief in the district court
18 of the county in which the action allegedly occurred or in
19 the district court of Polk county. The court shall hold a
20 hearing on the motion for a temporary restraining order or a
21 preliminary injunction within thirty days of service of the
22 petition.

23 3. In actions under this section, the court may award
24 the prevailing party, other than the state or any political
25 subdivision of the state, reasonable attorney fees and costs.

26 4. Sovereign immunity shall not be an affirmative defense in
27 any action pursued under this section.

28 Sec. 9. NEW SECTION. 724A.9 When action is not a violation.

29 1. A person does not violate the provisions of this chapter
30 when the person provides material aid to federal officers
31 who are in pursuit of a suspect when there is a demonstrable
32 criminal nexus with another state or country and such suspect
33 is either not a citizen of this state or is not present in this
34 state.

35 2. A person does not violate the provisions of this chapter

1 when the person provides material aid to federal prosecutors
2 for felony violations involving controlled substances or
3 violations against another person when such prosecution
4 includes weapons violations substantially similar to the laws
5 of this state so long as such weapons violations are merely
6 ancillary to such prosecution.

7 EXPLANATION

8 The inclusion of this explanation does not constitute agreement with
9 the explanation's substance by the members of the general assembly.

10 This bill creates the second amendment preservation Act.

11 The bill defines "law-abiding citizen" to include a person
12 who is not otherwise precluded under state law from possessing
13 a firearm and does not include anyone who is not legally
14 present in the United States or the state of Iowa. The bill
15 affirms the state of Iowa's authority to regulate firearms
16 within its borders. The bill prohibits the enforcement of any
17 federal infringement on the people's right to keep and bear
18 arms. The bill provides examples of federal actions that are
19 considered infringements on the right to keep and bear arms,
20 including those actions that might reasonably be expected
21 to create a chilling effect on the purchase or ownership of
22 firearms, firearm accessories, or ammunition by law-abiding
23 citizens or any act ordering the confiscation of firearms,
24 firearm accessories, or ammunition from law-abiding citizens.
25 The bill declares void in the state a federal action that is
26 considered an infringement on the right to keep and bear arms.

27 The bill places a duty on courts and law enforcement agencies
28 of this state to protect the rights of law-abiding citizens
29 to keep and bear arms within the borders of this state and to
30 protect these rights from the infringements defined in the
31 bill. The bill holds liable a political subdivision or law
32 enforcement agency that employs a law enforcement officer who
33 acts knowingly to violate the provisions of the bill while
34 acting under color of any state or federal law. The bill also
35 provides that if a political subdivision or law enforcement

1 agency knowingly employs an individual acting or who previously
2 acted as an official, agent, employee, or deputy of the federal
3 government or otherwise acted under the color of federal law
4 within the borders of this state who knowingly enforced or
5 attempted to enforce, or gave material aid and support to
6 the efforts of another to enforce or attempt to enforce, an
7 infringement identified in the bill, the political subdivision
8 or law enforcement agency is subject to a civil penalty of
9 \$50,000 for each such person employed. In an action for
10 injunctive relief, a political subdivision or law enforcement
11 agency that is found to have violated the bill is responsible
12 for paying reasonable attorney fees and costs and is subject to
13 a civil penalty of \$50,000 for each violation.