2023 South Dakota Legislature

House Bill 1173

AMENDMENT 1173D
FOR THE INTRODUCED BILL

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

An Act to prevent the enforcement of unconstitutional federal laws and directives related to firearms, accessories, and ammunition and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 23-7 be amended with a NEW SECTION:

Any federal act, law, order, or regulation, whether past, present, or future, which infringes on the people's right to keep and bear arms, as guaranteed by the U.S. Const. amend. II and S.D. Const., Art. VI, § 24, is invalid in this state, may not be recognized by this state, is specifically rejected and unenforceable by this state, and is to be considered null, void, and of no effect in this state. The application of this section includes:

(1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition, not common to all other goods and services, which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(2) Any registration or tracking of firearms, firearm accessories, or ammunition, which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(3) Any registration or tracking of the owners of firearms, firearm accessories, or ammunition, which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(4) Any act forbidding the possession, ownership, use, or transfer of any type of firearm, firearm accessory, or ammunition, by law-abiding citizens;

(5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens; and

(6) Any other federal act, law, order, or regulation, that is determined by the Legislature of South Dakota or a court to contravene rights granted by the U.S. Const. amend. II or the S.D. Const., Art. VI, § 24.

Section 2. That chapter 23-7 be amended with a NEW SECTION:

It is the duty of the courts and law enforcement agencies of this state to protect, from infringement, the right of each law-abiding citizen to keep and bear arms within the borders of this state.

Section 3. That chapter 23-7 be amended with a NEW SECTION:

No elected or appointed official or employee of this state, or of any political subdivision of this state, may enforce or attempt to enforce any act, law, order, or regulation, described in section 1 of this Act, or any local ordinance that infringes upon the right of a law-abiding citizen to keep and bear arms.

Nothing in this section precludes the acceptance of federal aid for the purpose of enforcing the laws of this state.

Section 4. That chapter 23-7 be amended with a NEW SECTION:

If a law enforcement officer knowingly acts, in an official capacity, to enforce or attempt to enforce any act, law, order, or regulation, described in section 1 of this Act, or any local ordinance that infringes upon the right of a law-abiding citizen to keep and bear arms, the officer's employing agency is liable to any injured party, and subject to a civil penalty in the amount of fifty thousand dollars per occurrence. Any civil penalty collected under this section must be deposited in the state general fund.

A citizen who has been subjected to the enforcement or attempted enforcement of any act, law, order, or regulation, described in section 1 of this Act, has a private cause of action for a declaratory judgment and for damages and costs.

Section 5. That chapter 23-7 be amended with a NEW SECTION:

Any political subdivision of this state is subject to a civil penalty in the amount of fifty thousand dollars, if the political subdivision:

(1) Permits the knowing employment of a person who:

(a) Prior to that employment, was an official, agent, or employee of the United States government; and

(b) On or after July 1, 2023, while acting in a capacity referenced in subsection (a), and under the color of federal law, knowingly enforced or attempted to enforce any act, law, order, or regulation, described in section 1 of this Act; or

(2) Permits the knowing employment of a person who, on or after July 1, 2023, gave material aid and support to the efforts of another for the purpose of enforcing or attempting to enforce any act, law, order, or regulation, described in section 1 of this Act.

Any civil penalty collected under this section must be deposited in the state general fund.

Any person residing within this state and having grounds to believe that a violation of this section has occurred, may bring a private cause of action.

Any person residing within the political subdivision and having grounds to believe that a violation of this section has occurred, may seek injunctive relief. A court shall hold a hearing to consider a petition for injunctive relief within thirty days.

The court may award a person bringing an action or seeking relief under this section reasonable attorney's fees and costs.

Section 6. That chapter 23-7 be amended with a NEW SECTION:

Nothing in section 5 of this Act precludes the provision of material aid and support to:

(1) Any federal official pursuing a suspect, if there is a demonstrable criminal nexus with another state or country and the suspect is not a citizen of this state and is not present in this state; or

(2) Any person prosecuting any crime of violence or a felony pursuant to §§ 22-42-2, 22-42-3, 22-42-4, 22-42-8, 22-42-9, 22-42-10, or 22-42-19, if that prosecution includes weapons violations that are merely ancillary to the prosecution.

Section 7. That chapter 23-7 be amended with a NEW SECTION:

Terms used in this Act mean:

(1) "Law-abiding citizen," a person who is legally present in the United States and is not otherwise precluded under state law from possessing a firearm; and

(2) "Material aid and support," voluntarily providing or allowing another person to make use of:

(a) Clothing;

(b) Communications equipment or services, including social media accounts;

(c) Facilities;

(d) Lodging;

(e) Personnel;

(f) Transportation;

(g) Weapons; or

(h) Any other physical assets.

Section 8. That chapter 23-7 be amended with a NEW SECTION:

Material aid and support, as the term is defined in section 7 of this Act, does not preclude any person from:

(1) Giving or allowing the use of medicine or other goods or materials necessary for the treatment of a physical injuries; or

(2) Assisting a person in escaping a serious, immediate risk of a life-threatening injury.

Section 9. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

AMENDMENT