



April 13, 2011

**ENGROSSED
SENATE BILL No. 292**

DIGEST OF SB 292 (Updated April 13, 2011 3:38 pm - DI 84)

Citations Affected: IC 14-22; IC 35-47.

Synopsis: Preemption of local firearm regulation. Prohibits, with certain exceptions, a political subdivision from regulating any matter pertaining to firearms, ammunition, and firearm accessories. Allows a person to file an action against a political subdivision if the person is adversely affected by an ordinance, measure, enactment, rule, or policy of the political subdivision that violates the law.

Effective: July 1, 2011.

**Tomes, Nugent, Smith J, Schneider,
Banks, Waltz, Steele, Waterman,
Kruse**

(HOUSE SPONSORS — SPEEDY, EBERHART, KOCH, VANNATTER,
GOODIN)

January 6, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

January 27, 2011, amended, reported favorably — Do Pass.

February 10, 2011, read second time, amended, ordered engrossed.

February 11, 2011, engrossed.

February 14, 2011, read third time, passed. Yeas 38, nays 12.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Public Policy.

April 13, 2011, amended, reported — Do Pass.

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ES 292—LS 6714/DI 87+



April 13, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 292



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 14-22-31.5-5 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. Except as
- 3 specifically prohibited by this chapter **and subject to IC 35-47-11.1**,
- 4 a local unit of government may regulate the location, use, operation,
- 5 safety, and construction of a shooting range.
- 6 SECTION 2. IC 35-47-1-2.5 IS ADDED TO THE INDIANA CODE
- 7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 8 1, 2011]: **Sec. 2.5. "Ammunition", for purposes of IC 35-47-11.1,**
- 9 **means:**
- 10 (1) **fixed cartridge ammunition;**
- 11 (2) **shotgun shells;**
- 12 (3) **the individual components of fixed cartridge ammunition**
- 13 **and shotgun shells;**
- 14 (4) **projectiles for muzzle loading firearms; and**
- 15 (5) **any propellant used in a firearm or in firearm**
- 16 **ammunition.**
- 17 SECTION 3. IC 35-47-1-5.1 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2011]: **Sec. 5.1. "Firearm accessory" means:**

- 3 (1) any device specifically adapted to enable:
 - 4 (A) the wearing or carrying about one's person; or
 - 5 (B) the storage or mounting in or on any conveyance;
 - 6 of a firearm; and
- 7 (2) any attachment or device specifically adapted to be
 - 8 inserted into or affixed onto any firearm to enable, alter, or
 - 9 improve the functioning or capabilities of the firearm.

10 SECTION 4. IC 35-47-11.1 IS ADDED TO THE INDIANA CODE
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]:

13 **Chapter 11.1. Local Regulation of Firearms, Ammunition, and**
14 **Firearm Accessories**

15 **Sec. 1. This chapter applies to a political subdivision (as defined**
16 **in IC 3-5-2-38).**

17 **Sec. 2. For purposes of this chapter, "lawful discharge" means**
18 **the following:**

- 19 (1) A discharge of a firearm in self-defense as provided in
20 IC 35-41-3-2.
- 21 (2) A discharge of a firearm in a shooting range (as defined in
22 IC 14-22-31.5-3).
- 23 (3) A discharge of a firearm while attending a firearms
24 instruction course.
- 25 (4) A discharge of a firearm in a properly zoned indoor firing
26 range.
- 27 (5) A discharge of a firearm in or at a conservation club
28 whose mission includes education of safe firearms practice.
- 29 (6) A discharge of a firearm while engaged in a legal hunting
30 activity, unless the discharge is prohibited or restricted by
31 zoning or a general ordinance.

32 **Sec. 3. Except as provided in section 5 of this chapter, a political**
33 **subdivision may not regulate:**

- 34 (1) firearms, ammunition, and firearm accessories;
- 35 (2) the ownership, possession, use, lawful discharge, carrying,
36 transportation, registration, transfer, and storage of firearms,
37 ammunition, and firearm accessories;
- 38 (3) commerce in and taxation of firearms, firearm
39 ammunition, and firearm accessories; and
- 40 (4) any other matter pertaining to or relating to firearms,
41 ammunition, and firearm accessories.

42 **Sec. 4. Any ordinance, measure, enactment, rule, policy, or**

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1 exercise of proprietary authority of a political subdivision or of an
2 employee or agent of a political subdivision acting in an official
3 capacity:

- 4 (1) enacted or undertaken before, on, or after June 30, 2011;
- 5 and
- 6 (2) that pertains to or affects the matters listed in section 3 of
- 7 this chapter;

8 is void.

9 **Sec. 5. This chapter may not be construed to prevent:**

- 10 (1) a law enforcement agency of a political subdivision from
- 11 enacting and enforcing regulations pertaining to firearms,
- 12 ammunition, or firearm accessories issued to or used by law
- 13 enforcement officers in the course of their official duties;
- 14 (2) subject to IC 34-28-7-2, an employer from regulating or
- 15 prohibiting the employees of the employer from carrying
- 16 firearms and ammunition in the course of the employee's
- 17 official duties;
- 18 (3) a court or administrative law judge from hearing and
- 19 resolving any case or controversy or issuing any opinion or
- 20 order on a matter within the jurisdiction of the court or
- 21 judge;
- 22 (4) the enactment or enforcement of generally applicable
- 23 zoning or business ordinances that apply to firearms
- 24 businesses to the same degree as other businesses. However,
- 25 an ordinance that is designed or enforced to effectively
- 26 restrict or prohibit the sale, purchase, transfer, manufacture,
- 27 or display of firearms, ammunition, or firearm accessories
- 28 that is otherwise lawful under the laws of this state is void. A
- 29 unit (as defined in IC 36-1-2-23) may not use the unit's
- 30 planning and zoning powers under IC 36-7-4 to prohibit the
- 31 sale of firearms within a prescribed distance of any other type
- 32 of commercial property or of school property or other
- 33 educational property;
- 34 (5) the enactment or enforcement of a provision prohibiting
- 35 or restricting the possession of a firearm in any building that
- 36 contains the courtroom of a circuit, superior, city, town, or
- 37 small claims court. However, if a portion of the building is
- 38 occupied by a residential tenant or private business, any
- 39 provision restricting or prohibiting the possession of a firearm
- 40 does not apply to the portion of the building that is occupied
- 41 by the residential tenant or private business, or to common
- 42 areas of the building used by a residential tenant or private

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- 1 **business;**
- 2 **(6) the enactment or enforcement of a provision prohibiting**
- 3 **or restricting the intentional display of a firearm at a public**
- 4 **meeting;**
- 5 **(7) the enactment or enforcement of a provision prohibiting**
- 6 **or restricting the possession of a firearm in a public hospital**
- 7 **corporation that contains a secure correctional health unit**
- 8 **that is staffed by a law enforcement officer twenty-four (24)**
- 9 **hours a day;**
- 10 **(8) the imposition of any restriction or condition placed on a**
- 11 **person participating in:**
 - 12 **(A) a community corrections program (IC 11-12-1);**
 - 13 **(B) a forensic diversion program (IC 11-12-3.7); or**
 - 14 **(C) a pretrial diversion program (IC 33-39-1);**
- 15 **(9) the enforcement or prosecution of the offense of criminal**
- 16 **recklessness (IC 35-42-2-2) involving the use of a firearm; or**
- 17 **(10) the promoters or organizers of an event occurring on**
- 18 **property leased from a political subdivision or municipal**
- 19 **corporation from:**
 - 20 **(A) establishing, at the promoter's or organizer's own**
 - 21 **discretion, rules of conduct or admission upon which**
 - 22 **attendance at or participation in an event is conditioned;**
 - 23 **or**
 - 24 **(B) the implementation or enforcement of rules of conduct**
 - 25 **or admission in connection with the event by a political**
 - 26 **subdivision or municipal corporation;**
- 27 **(11) the enactment or enforcement of a provision prohibiting**
- 28 **or restricting the possession of a firearm in a hospital**
- 29 **established and operated under IC 16-22-2 or IC 16-23;**
- 30 **(12) a unit from using the unit's planing and zoning powers**
- 31 **under IC 36-7-4 to prohibit the sale of firearms within two**
- 32 **hundred (200) feet of a school by a person having a business**
- 33 **that did not sell firearms within two hundred (200) feet of a**
- 34 **school before April 1, 1994; or**
- 35 **(13) a:**
 - 36 **(A) city or town; or**
 - 37 **(B) consolidated city, including:**
 - 38 **(i) all the territory that comprised the first class city**
 - 39 **before it became a consolidated city under IC 36-3-1;**
 - 40 **and**
 - 41 **(ii) the included towns (as defined in IC 36-3-1-7).**
- 42 **This clause does apply to the territory of an excluded city**

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(as defined in IC 36-3-1-7);
from enacting or enforcing a provision prohibiting or
restricting the lawful discharge of a firearm at a shooting
range.

Sec. 6. A person adversely affected by an ordinance, measure, enactment, rule, or policy adopted or enforced by a political subdivision that violates this chapter may file an action in a court with competent jurisdiction against the political subdivision for:

- (1) declarative and injunctive relief; and**
- (2) actual and consequential damages attributable to the violation.**

Sec. 7. A person is "adversely affected" for purposes of section 6 of this chapter if either of the following applies:

(1) The person is an individual who meets all of the following requirements:

- (A) The individual lawfully resides within the United States.**
- (B) The individual may legally possess a firearm under the laws of Indiana.**
- (C) The individual is or was subject to the ordinance, measure, enactment, rule, or policy of the political subdivision that is the subject of an action filed under section 6 of this chapter. An individual is or was subject to the ordinance, measure, enactment, rule, or policy of the political subdivision if the individual is or was physically present within the boundaries of the political subdivision for any reason.**

(2) The person is a membership organization that:

- (A) includes two (2) or more individuals described in subdivision (1); and**
- (B) is dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes.**

Sec. 8. A prevailing plaintiff in an action under section 6 of this chapter is entitled to recover from the political subdivision the following:

- (1) The greater of the following:**
 - (A) Actual damages, including consequential damages.**
 - (B) Liquidated damages of three (3) times the plaintiff's attorney's fees.**
- (2) Court costs (including fees).**
- (3) Reasonable attorney's fees.**

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1 SECTION 5. IC 35-47-11 IS REPEALED [EFFECTIVE JULY 1,
2 2011].

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 292, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 6, delete "or".

Page 3, line 18, delete "property." and insert "**property; or (5) the enactment or enforcement of a provision prohibiting or restricting the possession of a firearm in any building that contains the courtroom of a circuit, superior, city, town, or small claims court.**".

and when so amended that said bill do pass.

(Reference is to SB 292 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 292 be amended to read as follows:

Page 2, line 20, after "use," insert "**lawful**".

Page 3, line 18, delete "or".

Page 3, line 22, after "court." insert "**However, if a portion of the building is occupied by a residential tenant or private business, any provision restricting or prohibiting the possession of a firearm does not apply to the portion of the building that is occupied by the residential tenant or private business, or to common areas of the building used by a residential tenant or private business;**

(6) the enactment or enforcement of a provision prohibiting or restricting the intentional display of a firearm at a public meeting;

(7) the enactment or enforcement of a provision prohibiting or restricting the possession of a firearm in a public hospital corporation that contains a secure correctional health unit that is staffed by a law enforcement officer twenty-four (24) hours a day;

(8) the imposition of any restriction or condition placed on a

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person participating in:

- (A) a community corrections program (IC 11-12-1);**
- (B) a forensic diversion program (IC 11-12-3.7); or**
- (C) a pretrial diversion program (IC 33-39-1); or**
- (9) the enforcement or prosecution of the offense of criminal recklessness (IC 35-42-2-2) involving the use of a firearm."**

(Reference is to SB 292 as printed January 28, 2011.)

TOMES

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 292, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 16 and 17, begin a new paragraph and insert:

"Sec. 2. For purposes of this chapter, "lawful discharge" means the following:

- (1) A discharge of a firearm in self-defense as provided in IC 35-41-3-2.**
- (2) A discharge of a firearm in a shooting range (as defined in IC 14-22-31.5-3).**
- (3) A discharge of a firearm while attending a firearms instruction course.**
- (4) A discharge of a firearm in a properly zoned indoor firing range.**
- (5) A discharge of a firearm in or at a conservation club whose mission includes education of safe firearms practice.**
- (6) A discharge of a firearm while engaged in a legal hunting activity, unless the discharge is prohibited or restricted by zoning or a general ordinance."**

Page 2, line 17, delete "2." and insert "3."

Page 2, line 17, delete "4" and insert "5".

Page 2, line 27, delete "3." and insert "4."

Page 2, line 33, delete "section 2" and insert "section 3".

Page 2, line 36, delete "4." and insert "5."

Page 3, line 41, delete "or".

Page 4, line 1, delete "firearm." and insert "**firearm; or**".

Page 4, between lines 1 and 2, begin a new line block indented and insert:

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"(10) the promoters or organizers of an event occurring on property leased from a political subdivision or municipal corporation from:

(A) establishing, at the promoter's or organizer's own discretion, rules of conduct or admission upon which attendance at or participation in an event is conditioned; or

(B) the implementation or enforcement of rules of conduct or admission in connection with the event by a political subdivision or municipal corporation;

(11) the enactment or enforcement of a provision prohibiting or restricting the possession of a firearm in a hospital established and operated under IC 16-22-2 or IC 16-23;

(12) a unit from using the unit's planing and zoning powers under IC 36-7-4 to prohibit the sale of firearms within two hundred (200) feet of a school by a person having a business that did not sell firearms within two hundred (200) feet of a school before April 1, 1994; or

(13) a:

(A) city or town; or

(B) consolidated city, including:

(i) all the territory that comprised the first class city before it became a consolidated city under IC 36-3-1; and

(ii) the included towns (as defined in IC 36-3-1-7).

This clause does apply to the territory of an excluded city (as defined in IC 36-3-1-7);

from enacting or enforcing a provision prohibiting or restricting the lawful discharge of a firearm at a shooting range."

Page 4, line 2, delete "5." and insert "6".

Page 4, line 9, delete "6." and insert "7".

Page 4, line 10, delete "5" and insert "6".

Page 4, line 20, delete "5" and insert "6".

Page 4, line 31, delete "7." and insert "8".

Page 4, line 31, delete "5" and insert "6".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 292 as reprinted February 11, 2011.)

DAVIS, Chair

Committee Vote: yeas 6, nays 1.

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