

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1523 Session of
2011

INTRODUCED BY METCALFE, AUMENT, BENNINGHOFF, CALTAGIRONE,
CAUSER, COX, CREIGHTON, CUTLER, ELLIS, GABLER, GEORGE,
GIBBONS, GRELL, GROVE, HARRIS, HESS, HUTCHINSON, KAUFFMAN,
F. KELLER, KNOWLES, KORTZ, KOTIK, KRIEGER, LONGIETTI,
MALONEY, METZGAR, MILLARD, MILLER, MOUL, MUSTIO, PERRY,
PETRARCA, PYLE, RAPP, READSHAW, ROAE, ROCK, SACCONI, STABACK,
STEVENSON, SWANGER, TALLMAN, TURZAI, VULAKOVICH, WHITE,
CHRISTIANA, SAYLOR, HICKERNELL, BAKER, HAHN, DENLINGER,
LAWRENCE, HELM, BROOKS, HARHART, M. K. KELLER, EVANKOVICH,
TOOHIL, MARSHALL, HEFFLEY, GOODMAN, GILLEN, BEAR, REICHLEY,
OBERLANDER, STERN, HARHAI, NEUMAN, D. COSTA, EMRICK AND
BLOOM, MAY 11, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 6, 2012

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in firearms and other dangerous
3 articles, further providing for limitation on the regulation
4 of firearms and ammunition.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 ~~Section 1. Section 6120(b) of Title 18 of the Pennsylvania~~ ←
8 ~~Consolidated Statutes is amended and the section is amended by~~
9 ~~adding a subsection to read:~~

10 ~~§ 6120. Limitation on the regulation of firearms and~~
11 ~~ammunition.~~

12 * * *

13 ~~(a.2) Remedies for unlawful regulation. Notwithstanding any~~

~~1 other provision of law, a party who brings or maintains an
2 action at law or in equity against a county, municipality or
3 township that has regulated the lawful ownership, possession,
4 transfer or transportation of firearms, ammunition or ammunition
5 components in violation of subsection (a) or 53 Pa.C.S. §
6 2962(g) (relating to limitation on municipal powers), shall be
7 entitled to:~~

~~8 (1) Reimbursement of actual damages and reasonable
9 attorney fees and costs incurred if, within 30 days of
10 commencement of the action but prior to a final determination
11 by a court in favor of either party, the county, municipality
12 or township rescinds or repeals the ordinance, resolution or
13 other practice at issue in the action.~~

~~14 (2) Prejudgment liquidated damages if, after the
15 expiration of the 30 day period in paragraph (1) but prior to
16 a final determination by a court in favor of either party,
17 the county, municipality or township rescinds or repeals the
18 ordinance, resolution or other practice at issue in the
19 action.~~

~~20 (3) Postjudgment liquidated damages upon a final
21 determination by a court in favor of the party who brings or
22 maintains the action.~~

~~23 (b) Definitions. As used in this section, the following
24 words and phrases shall have the meanings given to them in this
25 subsection:~~

~~26 "Dealer." The term shall include any person engaged in the
27 business of selling at wholesale or retail a firearm or
28 ammunition.~~

~~29 "Firearms." This term shall have the meaning given to it in
30 section 5515 (relating to prohibiting of paramilitary training)~~

1 ~~but shall not include air rifles as that term is defined in~~
2 ~~section 6304 (relating to sale and use of air rifles).~~

3 ~~"Political subdivision." The term shall include any home-~~
4 ~~rule charter municipality, county, city, borough, incorporated~~
5 ~~town, township or school district.~~

6 ~~"Postjudgment liquidated damages." A sum equal to three~~
7 ~~times the actual damages, reasonable attorney fees and costs~~
8 ~~incurred by a party who successfully brings or maintains an~~
9 ~~action described under subsection (a.2).~~

10 ~~"Prejudgment liquidated damages." A sum equal to two times~~
11 ~~the actual damages, reasonable attorney fees and costs incurred~~
12 ~~by a party who brings or maintains an action described under~~
13 ~~subsection (a.2).~~

14 ~~Section 2. This act shall take effect immediately.~~

15 SECTION 1. SECTION 6120(B) OF TITLE 18 OF THE PENNSYLVANIA
16 CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS AMENDED BY
17 ADDING A SUBSECTION TO READ:

18 § 6120. LIMITATION ON THE REGULATION OF FIREARMS AND
19 AMMUNITION.

20 * * *

21 (A.2) UNLAWFUL REGULATION.--

22 (1) A PERSON ADVERSELY AFFECTED BY ANY ORDINANCE,
23 RESOLUTION, RULE OR PRACTICE PROMULGATED OR ENFORCED IN
24 VIOLATION OF SUBSECTION (A) OR OF 53 PA.C.S. 2962(G)
25 (RELATING TO LIMITATION ON MUNICIPAL POWERS) MAY FILE SUIT IN
26 AN APPROPRIATE COURT FOR DECLARATIVE AND INJUNCTIVE RELIEF
27 AND FOR ALL ACTUAL AND CONSEQUENTIAL DAMAGES ATTRIBUTABLE TO
28 THE VIOLATION.

29 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PARTY
30 WHO BRINGS OR MAINTAINS AN ACTION AT LAW OR IN EQUITY AGAINST

1 A POLITICAL SUBDIVISION THAT HAS REGULATED THE OTHERWISE
2 LAWFUL OWNERSHIP, POSSESSION, STORAGE, CARRYING, TRANSFER OR
3 TRANSPORTATION OF FIREARMS, AMMUNITION OR AMMUNITION
4 COMPONENTS IN VIOLATION OF SUBSECTION (A) OR OF 53 PA.C.S. §
5 2962(G) SHALL BE ENTITLED TO ALL OF THE FOLLOWING:

6 (I) REIMBURSEMENT OF ACTUAL DAMAGES AND REASONABLE
7 ATTORNEY FEES AND COSTS INCURRED IF, WITHIN 30 DAYS OF
8 COMMENCEMENT OF THE ACTION BUT PRIOR TO A FINAL
9 DETERMINATION BY A COURT IN FAVOR OF EITHER PARTY, THE
10 POLITICAL SUBDIVISION RESCINDS OR REPEALS THE ORDINANCE,
11 RESOLUTION, RULE OR PRACTICE AT ISSUE IN THE ACTION.

12 (II) PREJUDGMENT LIQUIDATED DAMAGES IF, AFTER THE
13 EXPIRATION OF THE 30-DAY PERIOD UNDER PARAGRAPH (1) BUT
14 PRIOR TO A FINAL DETERMINATION BY A COURT IN FAVOR OF
15 EITHER PARTY, THE POLITICAL SUBDIVISION RESCINDS OR
16 REPEALS THE ORDINANCE, RESOLUTION, RULE OR PRACTICE AT
17 ISSUE IN THE ACTION.

18 (III) POSTJUDGMENT LIQUIDATED DAMAGES UPON A FINAL
19 DETERMINATION BY A COURT IN FAVOR OF THE PARTY WHO BRINGS
20 OR MAINTAINS THE ACTION.

21 (3) IF A COURT FINDS THAT THE COUNTY, MUNICIPALITY OR
22 TOWNSHIP VIOLATED SUBSECTION (A) OR 53 PA.C.S. § 2962(G), THE
23 COURT MAY IMPOSE A CIVIL PENALTY ON THE COUNTY, MUNICIPALITY
24 OR TOWNSHIP OF UP TO \$5,000.

25 (B) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
26 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
27 SUBSECTION:

28 "AMMUNITION OR AMMUNITION COMPONENTS." FIXED CARTRIDGE
29 AMMUNITION, SHOTGUN SHELLS, THE INDIVIDUAL COMPONENTS OF FIXED
30 CARTRIDGE AMMUNITION AND SHOTGUN SHELLS, PROJECTILES FOR

1 MUZZLELOADING FIREARMS AND ANY PROPELLANT USED IN FIREARMS OR
2 AMMUNITION.

3 "DEALER." THE TERM SHALL INCLUDE ANY PERSON ENGAGED IN THE
4 BUSINESS OF SELLING AT WHOLESALE OR RETAIL A FIREARM OR
5 AMMUNITION.

6 "FIREARMS." THIS TERM SHALL HAVE THE MEANING GIVEN TO IT IN
7 SECTION 5515 (RELATING TO PROHIBITING OF PARAMILITARY TRAINING)
8 BUT SHALL NOT INCLUDE AIR RIFLES AS THAT TERM IS DEFINED IN
9 SECTION 6304 (RELATING TO SALE AND USE OF AIR RIFLES).

10 "PERSON ADVERSELY AFFECTED." ANY OF THE FOLLOWING:

11 (1) ANY PERSON WHO OTHERWISE HAS STANDING UNDER THE LAWS
12 OF THIS COMMONWEALTH TO BRING AN ACTION UNDER THIS SECTION.

13 (2) ANY PERSON WHO MEETS ALL OF THE FOLLOWING:

14 (I) CAN LEGALLY POSSESS A FIREARM UNDER THE LAWS OF
15 THIS COMMONWEALTH AND THE UNITED STATES.

16 (II) OWNS, POSSESSES, STORES, TRANSPORTS, CARRIES OR
17 TRANSFERS FIREARMS, AMMUNITION OR AMMUNITION COMPONENTS
18 WITHIN A POLITICAL SUBDIVISION OR WOULD DO SO BUT FOR THE
19 ORDINANCE, RESOLUTION, RULE OR PRACTICE IN A POLITICAL
20 SUBDIVISION.

21 (III) IS OR, IF PRESENT IN A POLITICAL SUBDIVISION,
22 WOULD BE SUBJECT TO THE ORDINANCE, RESOLUTION, RULE OR
23 PRACTICE IN THE POLITICAL SUBDIVISION, WHETHER OR NOT
24 SPECIFIC ENFORCEMENT ACTION HAS BEEN INITIATED OR
25 THREATENED AGAINST THE PERSON.

26 (3) A MEMBERSHIP ORGANIZATION, THE MEMBERS OF WHICH
27 INCLUDE A PERSON DESCRIBED UNDER THIS PARAGRAPH, THAT IS
28 DEDICATED IN WHOLE OR IN PART TO PROTECTING THE LEGAL, CIVIL
29 OR CONSTITUTIONAL RIGHTS OF ITS MEMBERSHIP.

30 "POLITICAL SUBDIVISION." THE TERM SHALL INCLUDE ANY HOME

1 RULE CHARTER MUNICIPALITY, COUNTY, CITY, BOROUGH, INCORPORATED
2 TOWN, TOWNSHIP OR SCHOOL DISTRICT.

3 "POSTJUDGMENT LIQUIDATED DAMAGES." A SUM EQUAL TO THREE
4 TIMES THE ACTUAL DAMAGES, REASONABLE ATTORNEY FEES AND COSTS
5 INCURRED BY A PARTY WHO SUCCESSFULLY BRINGS OR MAINTAINS AN
6 ACTION DESCRIBED UNDER SUBSECTION (A.2) (2).

7 "PREJUDGMENT LIQUIDATED DAMAGES." A SUM EQUAL TO TWO TIMES
8 THE ACTUAL DAMAGES, REASONABLE ATTORNEY FEES AND COSTS INCURRED
9 BY A PARTY WHO BRINGS OR MAINTAINS AN ACTION DESCRIBED UNDER
10 SUBSECTION (A.2) (2).

11 SECTION 2. THE AMENDMENT OR ADDITION OF 18 PA.C.S. §
12 6120(A.2) AND (B) SHALL APPLY TO AN ORDINANCE, RULE, RESOLUTION
13 OR POLICY ADOPTED BY A POLITICAL SUBDIVISION OR TO OFFICIAL
14 ACTIONS TAKEN BY AN EMPLOYEE OR AGENT OF A POLITICAL
15 SUBDIVISION, BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS
16 SECTION.

17 SECTION 3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.