



MICHIGAN OPEN CARRY

ADDING TEETH TO PREEMPTION

Enforcing Michigan's Firearms Preemption Laws

Michigan Open Carry, Inc. is seeking to add “teeth” to Michigan’s firearm preemption laws. The Michigan Legislature must back up what it once said and provide for punishments for municipalities that continue to violate preemption. We would like to thank Rep. Tom McMillin for helping to make these needed changes to Michigan Public Policy.

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ADDING TEETH TO PREEMPTION

Michigan Open Carry, Inc. is seeking to add “teeth” to Michigan’s firearm preemption laws.

In 1990, the Michigan Legislature sought to occupy the field of firearm regulation in Michigan by enacting Public Act 319 of 1990^[1] which was signed by then Governor Blanchard (D). This act limited the power of local governments to make their own firearm laws, thereby creating a single statewide set of rules for everyone to follow. Such a blanket set of rules eliminates arbitrary and invisible lines where a person could possibly go from law-abiding to criminal without intent or even knowledge of their offense. The end result is that it is easier for those who legally carry a firearm as a means of protecting themselves and their families to carry with confidence. Today, at least 46 states have enacted some sort of “firearm preemption” laws.^[2]

Despite the nationwide acceptance and understanding of such laws, there are still some officials and municipalities that do not understand the very nature of a criminal, and still believe new laws will curtail already criminalized activity. Unable to gain traction for their agendas at a higher level, these officials and municipalities, at times, are so set in their ways that they will willfully disregard state law to enact or preserve their illegal ordinances or regulations.

“Hip, hip, hooray if someone doesn’t carry a gun into a City Commission meeting because they are confused about their rights. I’m okay with that.” — Mayor of Grand Rapids, Jan 2013

Obviously, such actions are detrimental to the rights and abilities of law-abiding gun carriers, as well as illegal, and are easily and quickly punished, right? WRONG! While Michigan’s preemption statute makes it illegal for local units of government to enact or enforce any rules or regulations stricter than state law, it does not provide for any punishment should a violation occur.

Therein lies the problem. As gun owners already understand, simply telling someone who already does not respect your rights “NO” can sometimes not be enough. Without the ability to back up words, words can have little meaning or effect.

This is why the Michigan Legislature must back up what it once said and provide for punishments for municipalities that continue to violate preemption. Furthermore, when the violations of a local official are knowing and willful, that official must additionally be held accountable without further punishing the people the local official was supposed to serve.

If the average citizen is subject to repercussions for breaking our laws, why should we treat those who have been elected or appointed to carry out these laws any differently?

In order to address this issue, Michigan Open Carry, Inc. is working with Representative Tom McMillin (R-Rochester Hills) to follow in the path of other states like Ohio and Florida. By focusing on the following three areas, it is our intent to finally reach the preemption the Michigan Legislature originally set out to achieve over 20 years ago.

^[1] Michigan Public Act 319 of 1990 (MCL 123.1101 - 123.1105)

^[2] NRA-ILA - Firearms Preemption Laws

ADDING TEETH TO PREEMPTION

1) Provide a means of recouping costs for individuals or organizations that successfully challenge unlawful ordinances or regulations.

Frequently, local units of government with unlawful ordinances will respond to requests to correct those ordinances by effectively saying “sue us.” They know they have no chance of winning and the resulting suit will cost the municipality money, however they also know it will cost the plaintiff a significant amount of time and money, too. This “bleeding” tactic is not new and is not constrained to firearm preemption. Such tactics greatly exacerbate the harm caused by these unlawful ordinances while having no real effect on the people actually responsible.

By forcing local units of government that lose in court to pay for the plaintiff’s court costs and attorney fees, the first “punishment” is created. Bottom line, failure to comply will now come with a cost. Furthermore, the “bleeding” strategy is rendered ineffectual.

Currently, other states such as Ohio^[3] and Florida^[4] already have such provisions, while Pennsylvania^[5] and Wyoming^[6] are in the process.

2) Provide for punishments for elected or appointed individuals that knowingly and willfully violate preemption.

It’s one thing to make a mistake. It’s something entirely different to knowingly and willfully disregard the laws of this state and one’s duty. Such actions are inexcusable and must be addressed in a manner where the individual is held responsible, rather than further punishing the municipality as a whole.

In addition to common-law malfeasance, misfeasance and nonfeasance, preemption laws in states like Florida^[7] address such blatantly unlawful behavior by assessing civil fines of up to \$5000 against the local government official or officials. In fact, Florida even makes such behavior cause for removal from office by the governor.^[8] In Michigan it is already a misdemeanor for “Any public official, appointed or elected, who is responsible for enforcing or upholding any law [...] and who wilfully and knowingly fails [...] with the result that any person’s legal rights are denied.”^[9]

3) Grant standing to groups whose memberships are adversely affected by preempted ordinances.

Suing a municipality can be a daunting task. It can take a lot of time and significant financial investments. Oftentimes individuals are unable come up with these initial investments and are thus unable to bring about much needed and obvious corrections. Allowing organizations who are better organized and equipped to step in for such individuals only better facilitates reaching the correct outcome.

This is why the same states listed previously allow this.

^[3] Ohio Revised Code 9.68 (B)

^[4] Florida Statutes 790.33 (3)(f)(1) & (2)

^[5] Pennsylvania HB 2011 of 2014

^[6] Wyoming HB 0103 of 2013

^[7] Florida Statutes 790.33 (3)(c)

^[8] Florida Statutes 790.33 (3)(e)

^[9] Michigan Public Act 158 of 1967 (MCL 752.11 - 752.12)