



Written by [Raven Clabough](#) on February 22, 2012

## Anti-Gun Control Bill Moving Through Pa. Legislature

Pro-gun lawmakers in Pennsylvania are taking action and pushing an anti-gun-control bill through the General Assembly that is sure to send a strong message to anti-gun advocates. The measure, HB 1523, if passed and signed into law, would penalize lawmakers who pass gun control laws.



The *Pittsburgh Post Gazette* reports, “The legislation would penalize municipalities — including Philadelphia and 29 others — that have enacted laws to curb illegal gun sales by requiring them to pay damages and penalties to plaintiffs who challenge those laws in the courts.”

The underlying premise of the legislation is that Pennsylvania law does not permit local governments to pass any regulation or law regarding gun ownership, and therefore, a penalty should follow if the local government persists in doing so.

Current Pennsylvania law states:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

That law has been upheld by the Pennsylvania Supreme Court in *Schneck v. City of Philadelphia*, where it was determined that Pennsylvania’s preemption statute “clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms.”

The law was also upheld in a later case, *Ortiz v. Commonwealth*. In that case, the court determined, “Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern ... and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.”

In June 2009, the Superior Court made the following ruling in *NRA v. City of Philadelphia*: “We believe, however, that the crystal clear holding of our Supreme Court in *Ortiz*, that, ‘the General Assembly has [through enactment of § 6120(a)] denied all municipalities the power to regulate the ownership, possession, transfer or [transportation] of firearms.’”

The State Attorney General also declared, “In our view, the existing body of law, and its consistent application of the principles of preemption, at very minimum, counsels great caution in dealing with locally-enacted ordinances which affect firearm use, ownership, possession and transportation. Given what the courts have said, we believe it would be appropriate to treat such enactments as invalid.”

Still, local municipalities have continued to pass gun ordinances, setting the stage for HB 1523, which passed in the Republican-controlled House Judiciary Committee last week just days after it was introduced. It is expected to go to a full house vote as early as March, though its fate in the Senate is uncertain at this point.



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If passed, the law would permit plaintiffs who challenge gun-control laws to seek reimbursement for double the amount of the actual damages, usually consisting of attorney fees and costs, even if the law being challenged is repealed before a ruling is made.

Additionally, the legislation allows the court to impose a \$5,000 penalty and the plaintiff may seek triple the cost of the damages if a judge finds that the municipality in fact did violate state law through its gun control ordinance.

There have been several cases brought to court to address ordinances enacted at the borough, township, and city level in Pennsylvania. A number of ordinances were passed in 2008 to cut down on the trafficking of illegal guns, and ordinances in Pittsburgh and Philadelphia have thus far held up in court.

The state Supreme Court found that the plaintiffs in the cases, both individuals as well as the NRA, did not have standing in the court to sue. The legislation now moving through the General Assembly is meant to correct that problem. *The Gazette* explains, "The bill addresses that issue head-on by granting such standing to any 'aggrieved party' belonging to a gun rights group — or as the bill puts it, to any 'membership organization ... that is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its membership.'"

Lawmakers who support the measure contend that a number of local ordinances violate existing state law.

"I don't care what the court thinks, the court overstepped its bounds," said Rep. Daryl Metcalfe (R-Cranberry Township, pictured above left) the bill's lead sponsor. "Municipalities should not be allowed to represent the people by violating the law."

But according to Philadelphia District Attorney Seth Williams, it is inappropriate to punish local governments for attempting to find ways to control gun violence. "Subjecting them to heavy monetary damages when resources are already scarce is unnecessary," he insisted.

NRA Pennsylvania lobbyist John Hohenwarter points out, however, that the law's focus is whether ordinances are in violation of state law, not the impact of those ordinances on gun crimes. "I hope that municipalities recognize they will be held accountable," he commented. "Maybe they [will] end up removing the ordinances on their own."

Max Nacheman, director of the pro-gun control group CeaseFire, asserts that Pennsylvania's lawmakers are misunderstanding the laws that they claim are being violated by local ordinances. "State law preempts local regulation of *lawful* use, ownership, possession, transfer, or transportation of firearms," he insisted. "When a gun is lost or stolen, the lawful owner no longer possesses it, and the person who does, does not possess it lawfully."

Supporters of the local ordinances point out that their focus is on the "straw purchasing" of guns — when a person with a clean record purchases a gun for someone who is forbidden from owning a gun. The straw purchaser then claims that the gun was lost or stolen so as not to be held accountable. Most local ordinances mandate that lost and stolen firearms be reported.

Lt. Ray Evers of the Philadelphia Police Department's Public Affairs Unit indicates that Philadelphia police recover thousands of firearms each year, a number of which turn out to be lost or stolen. He notes that no one has yet been charged for failing to report a lost or stolen gun and believes that there should be a law that makes such reporting mandatory.



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"Having it as an offense is more to make people aware of the issues surrounding stolen firearms," Evers said. "We just want people to report it in a timely fashion. It can save people a lot of aggravation. A lost or stolen gun could turn up at the scene of an armed robbery or a shooting. If you lose your gun, it should give you peace of mind to report it."

But Rep. Todd Stephens contends that enforcing mandatory reporting is illegal and a poor use of police resources, particularly if straw purchasers will be lodging phony reports. "Just because the municipalities were not successful in changing the law [at the state level] doesn't mean they should violate it," he said.

The National Rifle Association has been adamant in its [support](#) of the Pennsylvania measure. Its website indicates:

House Bill 1523, sponsored by state Representative Daryl Metcalfe (R-12), would strengthen Pennsylvania's firearms preemption law to further ensure firearm and ammunition laws are uniform throughout the state. If enacted, House Bill 1523 would help eliminate the need for litigation by gun owners who have been unduly burdened by local ordinances which violate the current state firearm preemption law. Citizens with no criminal intent should not be placed in jeopardy of running afoul of local restrictions they don't even know exist simply because they have crossed from one municipality to another.

Likewise, as [noted](#) by LostandStolen.org, small fines for failing to report lost and stolen weapons are unlikely to deter straw purchasers when dozens of state and federal felonies resulting in jail time do not.

According to Philadelphia-based freelance journalist Patrick Kerkstra, cities are increasingly realizing that attempting to pass stricter gun-control laws is highly unpopular and ineffective in reducing violent gun crimes.

Philadelphia Mayor Michael Nutter, an active member of Mayors Against Illegal Guns, rolled out a new crime initiative last month that did not include a single new gun control measure. Instead, he focused on using already existing laws that allow for increased jail sentences of those who are found with an illegal weapon.

"I've got a state statute right now that can result in a sentence of five years. ... Let's use the tools that we have available," Nutter said. "The Lord helps those that help themselves."



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