

Short Ballot Title

An initiative prohibiting tracking firearms and nullifying federal firearms regulations.

Long Ballot Title

An initiative relating to tracking firearms; amending Chapter 33, Title 18, Idaho Code, by addition of a new section: No federal government agency, state governmental agency, local government, special district, or other political subdivision or official, agent, or employee of such federal, state or other governmental entity shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record or registry of the owners of those firearms. Providing for the destruction of records and nullifying federal laws.

Text of Initiative

SECTION 1. SHORT TITLE. This act may be known and cited as the Idaho right to protection act.

SECTION 2. DECLARATION. (a) The people find that the United States was founded on principles of freedom, including freedom from persecution by government. The federal and state governments were not intended to have the powers they have accumulated over the past few decades. Idaho citizens have the right of self-defense to protect themselves and others, as established in the United States and Idaho state Constitutions and recognized in *District of Columbia v. Heller*, 554 U.S. ---, 128 S. Ct. 2783 (2008). No governmental entity has the authority to supersede these constitutional guarantees.

(b) A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.

SECTION 3. STATEMENT OF PURPOSE. Given the right to self-defense codified in the federal and state constitutions which shall not be abridged by any government entity, the United States or the state of Idaho shall not prevent a person from exercising his or her constitutional right to use firearms or other lawful means of self defense in protecting himself or herself against criminal aggression. Regulations such as restrictions on firearms ownership by law-abiding citizens and burdensome mandates that would cause the systemic tracking of such guns or ammunition, hinder an individual's ability to exercise his or her lawful rights to constitutional self-defense. It is the intent of this act to explicitly preserve this right to constitutional self-defense already codified into the federal and state constitutions, and towards such purpose, nullify any federal law which might exist or might be passed in the future which would infringe such right. No part of this act shall be construed to retract any existing protections against infringement of the constitutional right to self-defense codified by existing laws of the United States and the state of Idaho.

SECTION 4. That Chapter 33, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-3327, Idaho Code, and to read as follows:

18-3327. TRACKING FIREARMS OR OTHER CONSTITUTIONAL MEANS OF SELF-DEFENSE. (1) PROHIBITIONS. No federal government agency, state governmental agency, local government, special district, or other political subdivision or official, agent, or employee of such federal, state, or other governmental entity shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms. Such entities or persons shall not mark, track, or trace with distinguishing symbols or radio frequency identification dust, chips, tags, paint, or any other direct identifiers of a resident of Idaho's firearms, ammunition, or other means of ensuring their constitutional rights of self-defense.

(2) EXCEPTIONS. The provisions of this section shall not apply to:

(a) Records of firearms, ammunition, or other means of self-defense that have been used in committing any crime;

(b) Records relating to any person who has been convicted of a crime;

(c) Records of firearms, ammunition, or other means of self-defense that have been reported stolen that are retained for a period not in excess of 10 days after such firearms are recovered. Official documentation recording the theft of a recovered weapon may be maintained no longer than the balance of the year entered, plus 2 years;

(d) Firearm records that must be retained by firearm dealers under valid federal law which has not been nullified by the state of Idaho, including copies of such records transmitted to law enforcement agencies. However, no state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, private or public, shall accumulate, compile, computerize, or otherwise collect or convert such written records into any form of list, registry, or database for any purpose;

(e) Records kept by the Department of Law Enforcement of NCIC transactions to the extent required by valid federal law which has not been nullified by the state of Idaho, and a log of dates of requests for criminal history record checks, unique approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to such dates;

(f) Records of an insurer that, as a condition to providing insurance against theft or loss of a firearm, ammunition, other means of self-defense, identify such items. Such records may not be sold, commingled with records relating to other such items, or transferred to any other person or entity. The insurer may not keep a record of such an item more than 60 days after the policy of insurance expires or after notification by the insured that the insured is no longer the owner of such item;

(g) Lists of customers of a firearm dealer retained by such dealer, provided that such lists do not disclose the particular firearms purchased. Such lists, or any parts thereof, may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity;

(h) Sales receipts retained by the seller of firearms, ammunition, or other means of self-defense or by a person providing credit for such purchase, provided that such receipts shall not serve as or be used for the creation of a database for registration of such items;

(i) Personal records of firearms, ammunition, or other means of self-defense maintained by the owner of such items;

(j) Records maintained by a business that stores or acts as the selling agent of firearms, ammunition, or other means of self-defense on behalf of the lawful owner of these items;

(k) Membership lists of organizations comprised of owners of firearms, ammunition, or other means of self-defense;

(l) Records maintained by an employer or contracting entity of the firearms, ammunition, or other means of self-defense owned by its officers, employees, or agents, if such firearms are used in the course of business performed on behalf of the employer;

(m) Records of firearms, ammunition, or other means of self-defense involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm;

(n) Paper documents relating to firearms involved in criminal cases, criminal investigations, and criminal prosecutions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm; or

(o) Noncriminal records relating to the receipt, storage or return of firearms, ammunition, or other means of self-defense including, but not limited to, records relating to such items impounded for storage or safekeeping, receipts proving that such items were returned to the rightful owner and supporting records of identification and proof of ownership, or records relating to such items impounded pursuant to levies or court orders, provided, however, that such records shall not be compiled, sorted, or otherwise arranged into any lists, indexes, or registries of firearms or firearms owners.

(3) **DESTRUCTION OF RECORDS.** Any list, record, or registry maintained or under construction on the effective date of this act shall be destroyed, unless prohibited by law or subject to an exception under subchapter (2), within 60 calendar days after this act becomes law. Thereafter, failure to destroy any such list, record, or registry may result in prosecution under this act.

(4) **PENALTIES.** Any person who, or entity that, violates a provision of this section shall be subject to the penalties described in subsection (5) of 18-3302J, Idaho Code.

(5) **CONSTRUCTION.** This section shall be construed to effectuate its remedial and deterrent purposes. This section may not be construed to grant any substantive, procedural privacy right or civil claim to any criminal defendant, and a violation of this section may not be grounds for the suppression of evidence in any criminal case.

SECTION 5. That Chapter 33, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-3302J, Idaho Code, and to read as follows:

18-3302J. NULLIFICATION OF UNCONSTITUTION FEDERAL FIREARMS REGULATIONS. (1) Any person in the state of Idaho not participating in an act of harming another person or in the act of resisting a lawful arrest has the right under the United States Constitution to protect themselves, including but not limited to, the following:

(a) By the use of firearms and ammunition;

(b) By the use of mace or other repellants; and

(c) By any other means necessary and appropriate to stop an aggressor.

(2) Pursuant to the terms of 18-4009, Idaho Code, any person in the state of Idaho has the

right to defend himself or herself in addition to other persons, unless he or she, or the person he or she is protecting, is in the act of harming another person or in the act of resisting a lawful arrest, without interference from federal or state agencies.

(3) Except as provided by 18-3319, Idaho Code, and other sections of Chapter 33, Title 18, Idaho Code, any citizen in Idaho shall not have their firearms, ammunition, or other means of ensuring their constitutional rights of self-defense waived, restricted, or otherwise burdened by any governmental agency including the tracking of such items pursuant to 18-3327, Idaho Code.

(4) Any federal law, rule, order, or other act by the federal government violating the provisions of this section is hereby declared to be invalid in this state, is not recognized by and is specifically rejected by this state, and is considered null and void and of no effect in this state.

(5)(a) Any person who, or entity that, violates a provision of this section commits a felony punishable by a fine not exceeding ten thousand dollars (\$10,000) or imprisonment in the state prison for not less than one (1) year nor more than twenty (20) years, or by both such fine and imprisonment.

(b) Except as required by the provisions of Section 13 Article I of the Idaho Constitution or the Sixth Amendment to the United States Constitution, no public funds shall be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against such person are dismissed or such person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of such governmental entity, in whose service or employ a list, record, or registry was compiled in violation of Section 18-3327, Idaho Code, may be assessed a fine of not more than \$5 million, if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The attorney general may bring a civil cause of action to enforce the fines assessed under this paragraph.

(d) The county prosecuting attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section and, where evidence indicates a violation may have occurred, shall prosecute violators.

(6) CONSTRUCTION. This section shall be construed to effectuate its remedial and deterrent purposes. This section may not be construed to grant any substantive, procedural privacy right or civil claim to any criminal defendant, and a violation of this section may not be grounds for the suppression of evidence in any criminal case.

SECTION 6. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.