

H. B. 2427

(By Delegates Howell, Ireland, Storch, R. Phillips, Hamilton, Sumner, Rowan, Gearheart and Kump)

[Introduced February 13, 2013; referred to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-26-1, relating to regulation of firearms, firearms accessories and ammunition.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §47-26-1, to read as follows:

ARTICLE 26. WEST VIRGINIA FIREARMS FREEDOM ACT.

§47-26-1. Exemption of firearms, a firearm accessory or ammunition manufactured and retained in West Virginia, from federal regulation under the Commerce Clause of the Constitution of the United States.

(a) Short title. -- This article may be cited as the "West Virginia Firearms Freedom Act".

(b) Legislative declarations of authority. -- The Legislature

1 declares that the authority for this section is as follows:

2 (1) The tenth amendment to the United States Constitution
3 guarantees to the states and their people all powers not granted to
4 the federal government elsewhere in the Constitution and reserves
5 to the state and people of West Virginia certain powers as they
6 were understood at the time that West Virginia was admitted to
7 statehood in 1863. The guaranty of those powers is a matter of
8 contract between the state and people of West Virginia and the
9 United States as of the time that the compact with the United
10 States was agreed upon and adopted by West Virginia and the United
11 States in 1863.

12 (2) The ninth amendment to the United States Constitution
13 guarantees to the people rights not granted in the Constitution and
14 reserves to the people of West Virginia certain rights as they were
15 understood at the time that West Virginia was admitted to statehood
16 in 1863. The guaranty of those rights is a matter of contract
17 between the state and people of West Virginia and the United States
18 as of the time that the compact with the United States was agreed
19 upon and adopted by West Virginia and the United States in 1863.

20 (3) The regulation of intrastate commerce is vested in the
21 states under the ninth and tenth amendments to the United States
22 Constitution.

23 (4) Article I, section two, of the West Virginia Constitution,
24 states that "the government of the United States is a government of

1 enumerated powers, and all powers not delegated to it, nor
2 inhibited to the states, are reserved to the states or to the
3 people thereof." Specifically enumerated among those "powers so
4 reserved to the states is the exclusive regulation of their own
5 internal government and police; and it is the high and solemn duty
6 of the several departments of government, created by this
7 Constitution, to guard and protect the people of this state from
8 all encroachments upon the rights so reserved."

9 (5) The second amendment to the United States Constitution
10 reserves to the people the right to keep and bear arms as that
11 right was understood at the time that West Virginia was admitted to
12 statehood in 1863, and the guaranty of the right is a matter of
13 contract between the state and people of West Virginia and the
14 United States as of the time that the compact with the United
15 States was agreed upon and adopted by West Virginia and the United
16 States in 1863.

17 (6) Article III, section twenty-two, of the West Virginia
18 Constitution clearly secures to West Virginia citizens, and
19 prohibits government interference with, the right of individual
20 West Virginia citizens to keep and bear arms.

21 (c) Definitions. -- As used in this chapter, the following
22 definitions apply:

23 (1) "Borders of West Virginia" means the boundaries of West
24 Virginia described in Article II, section one, of the 1872 West

1 Virginia Constitution.

2 (2) "Firearms accessories" means items that are used in
3 conjunction with or mounted upon a firearm but are not essential to
4 the basic function of a firearm, including, but not limited to,
5 telescopic or laser sights, magazines, flash or sound suppressors,
6 folding or aftermarket stocks and grips, speedloaders, ammunition
7 carriers, and lights for target illumination.

8 (3) "Generic and insignificant parts" includes, but is not
9 limited to, springs, screws, nuts and pins.

10 (4) "Manufactured" means that a firearm, a firearm accessory,
11 or ammunition has been created from basic materials for functional
12 usefulness, including, but not limited to, forging, casting,
13 machining, or other processes for working materials; or assembled
14 into a complete functional device from component parts.

15 (d) Prohibitions. -- A personal firearm, a firearm accessory,
16 or ammunition that is manufactured commercially or privately in
17 West Virginia and that remains within the borders of West Virginia
18 is not subject to federal law or federal regulation, including
19 registration, under the authority of Congress to regulate
20 interstate commerce. It is declared by the Legislature that those
21 items have not traveled in interstate commerce. This section
22 applies to a firearm, a firearm accessory, or ammunition that is
23 manufactured in West Virginia from basic materials and that can be
24 manufactured without the inclusion of any significant parts

1 imported from another state. Generic and insignificant parts that
2 have other manufacturing or consumer product applications are not
3 firearms, firearms accessories, or ammunition, and their
4 importation into West Virginia and incorporation into a firearm, a
5 firearm accessory, or ammunition manufactured in West Virginia does
6 not subject the firearm, firearm accessory, or ammunition to
7 federal regulation. It is declared by the Legislature that basic
8 materials, such as unmachined steel and unshaped wood, are not
9 firearms, firearms accessories, or ammunition and are not subject
10 to congressional authority to regulate firearms, firearms
11 accessories, and ammunition under interstate commerce as if they
12 were actually firearms, firearms accessories, or ammunition. The
13 authority of Congress to regulate interstate commerce in basic
14 materials does not include authority to regulate firearms, firearms
15 accessories, and ammunition made in West Virginia from those
16 materials. Firearms accessories that are imported into West
17 Virginia from another state and that are subject to federal
18 regulation as being in interstate commerce do not subject a firearm
19 to federal regulation under interstate commerce because they are
20 attached to or used in conjunction with a firearm in West Virginia.

21 (e) *Exceptions.* -- Section (d) does not apply to:

22 (1) A firearm that cannot be carried and used by one person;

23 (2) A firearm that has a bore diameter greater than one and
24 one-half inches and that uses smokeless powder, not black powder,

1 as a propellant;

2 (3) Ammunition with a projectile that explodes using an
3 explosion of chemical energy after the projectile leaves the
4 firearm; or

5 (4) Excepting shotguns, a firearm that discharges two or more
6 projectiles with one activation of the trigger or other firing
7 device.

8 (f) Marketing of firearms. -- A firearm manufactured in West
9 Virginia under the provisions of this section must have the words
10 "Made in West Virginia" clearly stamped on a central metallic part,
11 such as the receiver or frame.

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NOTE: The purpose of this bill is to exempt firearms, firearms accessories and ammunition from federal regulation if it is sold and maintained in the State of West Virginia.

This article is new; therefore, it has been completely underscored.