

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2212

BY DELEGATES HOWELL AND HAMILTON

[Introduced February 8, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §47-28-1, relating to regulation of firearms, firearms accessories and
 3 ammunition.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §47-28-1, to read as follows:

ARTICLE 28. WEST VIRGINIA FIREARMS FREEDOM ACT.

§47-28-1. 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.

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

2 (b) Legislative declarations of authority. -- The Legislature declares that the authority for
 3 this section is as follows:

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

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

16 West Virginia and the United States in 1863.

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

19 (4) Article I, section two, of the West Virginia Constitution, states that "the government of
20 the United States is a government of enumerated powers, and all powers not delegated to it, nor
21 inhibited to the states, are reserved to the states or to the people thereof." Specifically
22 enumerated among those "powers so reserved to the states is the exclusive regulation of their
23 own internal government and police; and it is the high and solemn duty of the several departments
24 of government, created by this Constitution, to guard and protect the people of this state from all
25 encroachments upon the rights so reserved."

26 (5) The second amendment to the United States Constitution reserves to the people the
27 right to keep and bear arms as that right was understood at the time West Virginia was admitted
28 to statehood in 1863, and the guaranty of the right is a matter of contract between the state and
29 people of West Virginia and the United States as of the time the compact with the United States
30 was agreed upon and adopted by West Virginia and the United States in 1863.

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

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

35 (1) "Borders of West Virginia" means the boundaries of West Virginia described in Article
36 II, section one, of the 1872 West Virginia Constitution.

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

41 (3) "Generic and insignificant parts" includes, but is not limited to, springs, screws, nuts

42 and pins.

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

47 (d) Prohibitions. -- A personal firearm, a firearm accessory, or ammunition that is
48 manufactured commercially or privately in West Virginia and that remains within the borders of
49 West Virginia is not subject to federal law or federal regulation, including registration, under the
50 authority of Congress to regulate interstate commerce. It is declared by the Legislature that those
51 items have not traveled in interstate commerce. This section applies to a firearm, a firearm
52 accessory, or ammunition that is manufactured in West Virginia from basic materials and that can
53 be manufactured without the inclusion of any significant parts imported from another state.
54 Generic and insignificant parts that have other manufacturing or consumer product applications
55 are not firearms, firearms accessories, or ammunition, and their importation into West Virginia
56 and incorporation into a firearm, a firearm accessory, or ammunition manufactured in West
57 Virginia does not subject the firearm, firearm accessory, or ammunition to federal regulation. It is
58 declared by the Legislature that basic materials, such as nonmachined steel and unshaped wood,
59 are not firearms, firearms accessories, or ammunition and are not subject to congressional
60 authority to regulate firearms, firearms accessories, and ammunition under interstate commerce
61 as if they were actually firearms, firearms accessories, or ammunition. The authority of Congress
62 to regulate interstate commerce in basic materials does not include authority to regulate firearms,
63 firearms accessories, and ammunition made in West Virginia from those materials. Firearms
64 accessories that are imported into West Virginia from another state and that are subject to federal
65 regulation as being in interstate commerce do not subject a firearm to federal regulation under
66 interstate commerce because they are attached to or used in conjunction with a firearm in West
67 Virginia.

- 68 (e) Exceptions. -- Section (d) does not apply to:
- 69 (1) A firearm that cannot be carried and used by one person;
- 70 (2) A firearm that has a bore diameter greater than one and one-half inches and that uses
71 smokeless powder, not black powder, as a propellant;
- 72 (3) Ammunition with a projectile that explodes using an explosion of chemical energy after
73 the projectile leaves the firearm; or
- 74 (4) Excepting shotguns, a firearm that discharges two or more projectiles with one
75 activation of the trigger or other firing device.
- 76 (f) Marketing of firearms. -- A firearm manufactured in West Virginia under the provisions
77 of this section must have the words "Made in West Virginia" clearly stamped on a central metallic
78 part, such as the receiver or frame.

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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.