

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2143

BY DELEGATE HOWELL

[Introduced January 9, 2019; 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; creating the “West Virginia Firearms Freedom Act”; providing legislative
4 declarations of authority; definitions; exceptions; and providing that firearms manufactured
5 in this state have the words “Made in West Virginia” clearly stamped on the firearm.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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.