

H. B. 2705

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

[Introduced January 21, 2011; referred to the
Committee on the Judiciary.]

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 chapter may be cited as the "West
Virginia Firearms Freedom Act".

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

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

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

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

22 (4) Article I, section two, of the West Virginia Constitution,
23 states that "the government of the United States is a government of
24 enumerated powers, and all powers not delegated to it, nor
25 inhibited to the states, are reserved to the states or to the

1 people thereof." Specifically enumerated among those "powers so
2 reserved to the states is the exclusive regulation of their own
3 internal government and police; and it is the high and solemn duty
4 of the several departments of government, created by this
5 Constitution, to guard and protect the people of this state from
6 all encroachments upon the rights so reserved."

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

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

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

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

24 (2) "Firearms accessories" means items that are used in
25 conjunction with or mounted upon a firearm but are not essential to

1 the basic function of a firearm, including, but not limited to,
2 telescopic or laser sights, magazines, flash or sound suppressors,
3 folding or aftermarket stocks and grips, speedloaders, ammunition
4 carriers, and lights for target illumination.

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

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

12 (d) Prohibitions -- A personal firearm, a firearm accessory,
13 or ammunition that is manufactured commercially or privately in
14 West Virginia and that remains within the borders of West Virginia
15 is not subject to federal law or federal regulation, including
16 registration, under the authority of Congress to regulate
17 interstate commerce. It is declared by the Legislature that those
18 items have not traveled in interstate commerce. This section
19 applies to a firearm, a firearm accessory, or ammunition that is
20 manufactured in West Virginia from basic materials and that can be
21 manufactured without the inclusion of any significant parts
22 imported from another state. Generic and insignificant parts that
23 have other manufacturing or consumer product applications are not
24 firearms, firearms accessories, or ammunition, and their
25 importation into West Virginia and incorporation into a firearm, a

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

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

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

19 (2) A firearm that has a bore diameter greater than one and
20 one-half inches and that uses smokeless powder, not black powder,
21 as a propellant;

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

25 (4) Excepting shotguns, a firearm that discharges two or more

1 projectiles with one activation of the trigger or other firing
2 device.

3 (f) Marketing of firearms -- A firearm manufactured in West
4 Virginia under the provisions of this section must have the words
5 "Made in West Virginia" clearly stamped on a central metallic part,
6 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.

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