

1 **Senate Bill No. 68**

2 (By Senators Sypolt, D. Hall and Williams)

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4 [Introduced February 13, 2013; referred to the Committee on the
5 Judiciary.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §47-26-1, §47-26-2,
12 §47-26-3, §47-26-4, §47-26-5 and §47-26-6, all relating to
13 creating the West Virginia Firearms Freedom Act; exempting
14 firearms, a firearm accessory or ammunition manufactured and
15 retained in West Virginia from federal regulation under the
16 Commerce Clause of the Constitution of the United States;
17 providing short title; legislative declarations of authority;
18 providing definitions; prohibitions; exceptions; and marketing
19 of firearms.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §47-26-1, §47-26-2,
23 §47-26-3, §47-26-4, §47-26-5 and §47-26-6, all to read as follows:

1 **ARTICLE 26. WEST VIRGINIA FIREARMS FREEDOM ACT.**

2 **§47-26-1. Short title.**

3 This article may be cited as the "West Virginia Firearms
4 Freedom Act."

5 **§47-26-2. Legislative declarations of authority.**

6 The Legislature declares that the authority for this section
7 is as follows:

8 (a) The Tenth Amendment to the United States Constitution
9 guarantees to the states and their people all powers not granted to
10 the federal government elsewhere in the Constitution and reserves
11 to the state and people of West Virginia certain powers as they
12 were understood at the time that West Virginia was admitted to
13 statehood in 1863. The guaranty of those powers is a matter of
14 contract between the state and people of West Virginia and the
15 United States as of the time that the compact with the United
16 States was agreed upon and adopted by West Virginia and the United
17 States in 1863.

18 (b) The Ninth Amendment to the United States Constitution
19 guarantees to the people rights not granted in the Constitution and
20 reserves to the people of West Virginia certain rights as they were
21 understood at the time that West Virginia was admitted to statehood
22 in 1863. The guaranty of those rights is a matter of contract
23 between the state and people of West Virginia and the United States

1 as of the time that the compact with the United States was agreed
2 upon and adopted by West Virginia and the United States in 1863.

3 (c) The regulation of intrastate commerce is vested in the
4 states under the Ninth and Tenth Amendments to the United States
5 Constitution.

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

14 (e) Article III, Section 22 of the West Virginia Constitution
15 clearly secures to West Virginia citizens, and prohibits government
16 interference with, the right of individual West Virginia citizens
17 to keep and bear arms.

18 **§47-26-3. Definitions.**

19 As used in this article, the following definitions apply:

20 (a) "Borders of West Virginia" means the boundaries of West
21 Virginia described in Article II, Section 1 of the 1872 West
22 Virginia Constitution.

23 (b) "Firearms accessories" means items that are used in

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

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

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

13 **§47-26-4. Prohibitions.**

14 A personal firearm, a firearm accessory or ammunition that is
15 manufactured commercially or privately in West Virginia and that
16 remains within the borders of West Virginia is not subject to
17 federal law or federal regulation, including registration, under
18 the authority of Congress to regulate interstate commerce. It is
19 declared by the Legislature that those items have not traveled in
20 interstate commerce.

21 This section applies to a firearm, a firearm accessory or
22 ammunition that is manufactured in West Virginia from basic
23 materials and that can be manufactured without the inclusion of any

1 significant parts imported from another state. Generic and
2 insignificant parts that have other manufacturing or consumer
3 product applications are not firearms, firearms accessories or
4 ammunition and their importation into West Virginia and
5 incorporation into a firearm, a firearm accessory or ammunition
6 manufactured in West Virginia does not subject the firearm, firearm
7 accessory or ammunition to federal regulation. It is declared by
8 the Legislature that basic materials, such as unmachined steel and
9 unshaped wood, are not firearms, firearms accessories or ammunition
10 and are not subject to congressional authority to regulate
11 firearms, firearms accessories and ammunition under the interstate
12 commerce as if they were actually firearms, firearms accessories or
13 ammunition. The authority of Congress to regulate interstate
14 commerce in basic materials does not include authority to regulate
15 firearms, firearms accessories and ammunition made in West Virginia
16 from those materials. Firearms accessories that are imported into
17 West 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 **§47-26-5. Exceptions.**

22 Section two of this article does not apply to:

23 (a) A firearm that cannot be carried and used by one person;

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

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

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

10 **§47-26-6. Marketing of firearms.**

11 A firearm manufactured in West Virginia under the provisions
12 of this section must have the words "Made in West Virginia" clearly
13 stamped on a central metallic part, such as the receiver or frame.

NOTE: The purpose of this bill is to exempt 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.

This article is new; therefore, strike-throughs and
underscoring have been omitted.