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Senate Bill No. 76

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

[Introduced January 8, 2014; 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 §47-27-1, §47-27-2, §47-27-3, §47-27-4, §47-27-5 and §47-27-6, all relating to creating the West Virginia Firearms Freedom Act; exempting 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; providing short title; legislative declarations of authority; providing definitions; prohibitions; exceptions; and marketing of firearms.

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 §47-27-1, §47-27-2, §47-27-3, §47-27-4, §47-27-5 and §47-27-6, all to read as follows:

ARTICLE 27. WEST VIRGINIA FIREARMS FREEDOM ACT.

1 **§47-27-1. Short title.**

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

4 **§47-27-2. Legislative declarations of authority.**

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

7 (a) The Tenth Amendment to the United States Constitution
8 guarantees to the states and their people all powers not granted to
9 the federal government elsewhere in the Constitution and reserves
10 to the state and people of West Virginia certain powers as they
11 were understood at the time that West Virginia was admitted to
12 statehood in 1863. The guaranty of those powers 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 (b) The Ninth Amendment to the United States Constitution
18 guarantees to the people rights not granted in the Constitution and
19 reserves to the people of West Virginia certain rights as they were
20 understood at the time that West Virginia was admitted to statehood
21 in 1863. The guaranty of those rights is a matter of contract
22 between the state and people of West Virginia and the United States
23 as of the time that the compact with the United States was agreed
24 upon and adopted by West Virginia and the United States in 1863.

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

4 (d) The Second Amendment to the United States Constitution
5 reserves to the people the right to keep and bear arms as that
6 right was understood at the time that West Virginia was admitted to
7 statehood in 1863, and the guaranty of the right 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 (e) Article III, Section 22 of the West Virginia Constitution
13 clearly secures to West Virginia citizens, and prohibits government
14 interference with, the right of individual West Virginia citizens
15 to keep and bear arms.

16 **§47-27-3. Definitions.**

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

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

21 (b) "Firearms accessories" means items that are used in
22 conjunction with or mounted upon a firearm but are not essential to
23 the basic function of a firearm, including, but not limited to,
24 telescopic or laser sights, magazines, flash or sound suppressors,

1 folding or aftermarket stocks and grips, speedloaders, ammunition
2 carriers and lights for target illumination.

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

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

10 **§47-27-4. Prohibitions.**

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

18 This section applies to a firearm, a firearm accessory or
19 ammunition that is manufactured in West Virginia from basic
20 materials and that can be manufactured without the inclusion of any
21 significant parts imported from another state. Generic and
22 insignificant parts that have other manufacturing or consumer
23 product applications are not firearms, firearms accessories or
24 ammunition and their importation into West Virginia and

1 incorporation into a firearm, a firearm accessory or ammunition
2 manufactured in West Virginia does not subject the firearm, firearm
3 accessory or ammunition to federal regulation. It is declared by
4 the Legislature that basic materials, such as unmachined steel and
5 unshaped wood, are not firearms, firearms accessories or ammunition
6 and are not subject to congressional authority to regulate
7 firearms, firearms accessories and ammunition under the interstate
8 commerce as if they were actually firearms, firearms accessories or
9 ammunition. The authority of Congress to regulate interstate
10 commerce in basic materials does not include authority to regulate
11 firearms, firearms accessories and ammunition made in West Virginia
12 from those materials. Firearms accessories that are imported into
13 West 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 **§47-27-5. Exceptions.**

18 Section two of this article does not apply to:

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

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

23 (c) Ammunition with a projectile that explodes using an
24 explosion of chemical energy after the projectile leaves the

1 firearm; or

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

5 **§47-27-6. Marketing of firearms.**

6 A firearm manufactured in West Virginia under the provisions
7 of this section must have the words "Made in West Virginia" clearly
8 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.