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**H. B. 2109**

(By Delegates, Howell, Rowan, Hamilton, Storch, Moffatt,  
Hamrick, Householder, Walters, Blair, Zatezalo and McGeehan)

[Introduced January 20, 2015; 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 §47-28-1, 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 §47-28-1, 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.**

(a) Short title. -- This article 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) The tenth amendment to the United States Constitution guarantees to the states and their  
people all powers not granted to the federal government elsewhere in the Constitution and reserves

1 to the state and people of West Virginia certain powers as they were understood at the time that West  
2 Virginia was admitted to statehood in 1863. The guaranty of those powers is a matter of contract  
3 between the state and people of West Virginia and the United States as of the time that the compact  
4 with the United States was agreed upon and adopted by West Virginia and the United States in 1863.

5 (2) The ninth amendment to the United States Constitution guarantees to the people rights  
6 not granted in the Constitution and reserves to the people of West Virginia certain rights as they were  
7 understood at the time that West Virginia was admitted to statehood in 1863. The guaranty of those  
8 rights is a matter of contract between the state and people of West Virginia and the United States as  
9 of 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 (3) The regulation of intrastate commerce is vested in the states under the ninth and tenth  
12 amendments to the United States Constitution.

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

20 (5) The second amendment to the United States Constitution reserves to the people the right  
21 to keep and bear arms as that right was understood at the time that West Virginia was admitted to  
22 statehood in 1863, and the guaranty of the right is a matter of contract between the state and people

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

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

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

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

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

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

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

19 (d) Prohibitions. -- A personal firearm, a firearm accessory, or ammunition that is  
20 manufactured commercially or privately in West Virginia and that remains within the borders of  
21 West Virginia is not subject to federal law or federal regulation, including registration, under the  
22 authority of Congress to regulate interstate commerce. It is declared by the Legislature that those

1 items have not traveled in interstate commerce. This section applies to a firearm, a firearm  
2 accessory, or ammunition that is manufactured in West Virginia from basic materials and that can  
3 be manufactured without the inclusion of any significant parts imported from another state. Generic  
4 and insignificant parts that have other manufacturing or consumer product applications are not  
5 firearms, firearms accessories, or ammunition, and their importation into West Virginia and  
6 incorporation into a firearm, a firearm accessory, or ammunition manufactured in West Virginia does  
7 not subject the firearm, firearm accessory, or ammunition to federal regulation. It is declared by the  
8 Legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms,  
9 firearms accessories, or ammunition and are not subject to congressional authority to regulate  
10 firearms, firearms accessories, and ammunition under interstate commerce as if they were actually  
11 firearms, firearms accessories, or ammunition. The authority of Congress to regulate interstate  
12 commerce in basic materials does not include authority to regulate firearms, firearms accessories,  
13 and ammunition made in West Virginia from those materials. Firearms accessories that are imported  
14 into West Virginia from another state and that are subject to federal regulation as being in interstate  
15 commerce do not subject a firearm 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 one-half inches and that uses  
20 smokeless powder, not black powder, as a propellant;

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

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

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

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