

Stricken language would be deleted from and underlined language would be added to present law.

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A Bill

HOUSE BILL 1752

By: Representatives Ballinger, Alexander, D. Altes, Barnett, Bell, Bragg, Cozart, Davis, Dotson, D. Douglas, Farrer, Fite, Harris, Hobbs, Hutchison, Jean, Lowery, D. Meeks, S. Meeks, Miller, Payton, Scott, Womack

By: Senators J. Woods, J. English, B. King, Rapert, G. Stubblefield

For An Act To Be Entitled

AN ACT TO REQUIRE STATE AGENCIES AND PUBLIC OFFICERS TO DISREGARD UNCONSTITUTIONAL OVERREACHES OF POWER; TO PROTECT THE CONSTITUTIONAL RIGHTS OF ARKANSANS; TO PREVENT THE FEDERAL GOVERNMENT FROM REGULATING THE MANUFACTURE, ASSEMBLY, AND TRADE OF FIREARMS WITHIN THE BORDERS OF ARKANSAS; AND FOR OTHER PURPOSES.

Subtitle

THE ARKANSAS SECOND AMENDMENT LIBERTIES SAFEGUARDS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4 is amended to create a new chapter to read as follows:

Chapter 21 – Jurisdiction Over Firearm Regulation

4-21-101. Scope.

(a)(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 United States Constitution and reserves to the State of Arkansas and its people certain powers as they were understood at the time that Arkansas was admitted into statehood in 1836.

(2) The guaranty of those powers is a matter of contract between the State of Arkansas and its people and the United States as of the time



that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(b)(1) The Ninth Amendment to the United States Constitution guarantees to the people rights not granted in the United States Constitution and reserves to the people of Arkansas certain rights as they were understood at the time that Arkansas was admitted into statehood in 1836.

(2) The guaranty of those rights is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

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

(d) The Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Arkansas was admitted into statehood in 1836, and the guaranty of the right is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(e)(1) Arkansas Constitution, Article 2, § 5, clearly secures to Arkansas citizens and prohibits government interference with the right of individual Arkansas citizens to keep and bear arms.

(2) This constitutional protection is unchanged from the 1836 Arkansas Constitution, which was approved by the United States Congress and the people of Arkansas, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

4-21-102. Definitions.

(a) As used in this chapter:

(1) "Borders of Arkansas" means the boundaries of Arkansas described in the Arkansas Constitution, Article 1;

(2) "Firearms accessory" means an item that is used in conjunction with or mounted upon a firearm but is not essential to the basic function of a firearm, including, but not limited to, telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target

illumination;

(3) "Generic and insignificant part" means a small component used in the manufacture of a firearm, including, but not limited to, a spring, a screw, a nut, or a pin; and

(4) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness, including, but not limited to, forging, casting, machining, or other processes for working materials.

4-21-103. Prohibitions.

(a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Arkansas and that remains within the borders of Arkansas is not subject to federal law or federal regulation, including registration, under the authority of the United States Congress to regulate interstate commerce, as those items have not traveled in interstate commerce.

(b)(1) This chapter applies to a firearm, a firearm accessory, or ammunition that is manufactured in Arkansas from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.

(2) Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearm accessories, or ammunition, and their importation into Arkansas and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Arkansas does not subject the firearm, firearm accessory, or ammunition to federal regulation.

(3) Basic materials, such as unmachined steel and unshaped wood, are not firearms, firearm accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearm accessories, and ammunition under interstate commerce as if they were actually firearms, firearm accessories, or ammunition.

(4) The authority of United States Congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearm accessories, and ammunition made in Arkansas from the materials contained in this subdivision (b)(4) as long as the firearm does not travel or is not sold outside the boundaries of the state of Arkansas.

(c) Firearms accessories that are imported into Arkansas from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Arkansas.

(d) This section does not apply to:

- (1) A firearm that cannot be carried and used by one (1) person;
- (2) A firearm that has a bore diameter greater than one and one-half inches (1 1/2") and that uses smokeless powder, not black powder, as a propellant;
- (3) Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or
- (4) Other than shotguns, a firearm that discharges two (2) or more projectiles with one (1) activation of the trigger or other firing device.

4-21-104. Marketing of firearms.

A firearm manufactured or sold in Arkansas that is subject to this chapter must have the words "Made in Arkansas" clearly and conspicuously stamped on a central metallic part, such as the receiver or frame.

SECTION 2. Arkansas Code Title 5, Chapter 73, Subchapter 1, is amended to create a new section to read as follows:

5-73-134. Unlawful enforcement of federal statutes.

(a) An employee of an agency of the State of Arkansas, any public servant of the State of Arkansas, or an agent or employee of the United States Government shall not knowingly enforce or attempt to enforce any act, law, statute, rule, or regulation of the United States Government created or effective on or after January 1, 2013 and relating to a personal firearm, firearm accessory, or ammunition that is owned or manufactured commercially or privately in Arkansas so long as that firearm, accessory, or ammunition is within the borders of Arkansas.

(b) A person who violates this section upon conviction is guilty of a Class A misdemeanor.

SECTION 3. Arkansas Code Title 12, Chapter 15, Subchapter 1, is

amended to add a new section to read as follows:

12-15-101. Prohibition against federal firearm regulation.

A federal law, rule, regulation, or order created or effective on or after January 1, 2013, shall be unenforceable within the borders of Arkansas if the law, rule, regulation, or order attempts to:

(1) Prohibit or restrict ownership of a semiautomatic firearm or any magazine of a firearm; or

(2) Require any firearm, magazine, or other firearm accessory to be registered in any manner.

SECTION 4. Arkansas Code § 16-81-106(b) and (c), concerning authority to arrest without a warrant, is amended to read as follows:

(b) A certified law enforcement officer may make an arrest:

(1) In obedience to a warrant of arrest delivered to him or her; and

(2)(A) Without a warrant, ~~where~~ if a public offense is committed in his or her presence or ~~where~~ if he or she has reasonable grounds for believing that the person arrested has committed a felony.

(B) In addition to any other warrantless arrest authority granted by law or court rule, a certified law enforcement officer may arrest a person for a misdemeanor without a warrant if the officer has probable cause to believe that the person has committed battery upon another person, the officer finds evidence of bodily harm, and the officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay, except as provided in subsection (i) of this section.

(c)(1) A certified law enforcement officer who is outside his or her jurisdiction may arrest without warrant a person who commits an offense within the officer's presence or view if the offense is a felony or a misdemeanor, except as provided in subsection (i) of this section.

(2)(A) A certified law enforcement officer making an arrest under subdivision (c)(1) of this section shall notify the law enforcement agency having jurisdiction where the arrest was made as soon as practicable after making the arrest.

(B) The law enforcement agency shall then take custody of the person committing the offense and take the person before a judge or magistrate.

(3) Statewide arrest powers for certified law enforcement officers will be in effect only when the officer is working outside his or her jurisdiction at the request of or with the permission of the municipal or county law enforcement agency having jurisdiction in the locale where the officer is assisting or working by request.

(4) Any law enforcement agency exercising statewide arrest powers under this section must have a written policy on file regulating the actions of its employees relevant to law enforcement activities outside its jurisdiction.

SECTION 5. Arkansas Code § 16-81-106, concerning authority to arrest without a warrant, is amended to add an additional subsection to read as follows:

(i) A certified law enforcement officer shall not make an arrest under § 5-73-134 without a warrant.

SECTION 6. Arkansas Code Title 25, Chapter 16, Subchapter 7, is amended to add a new section to read as follows:

25-16-714. Defense of an Arkansas resident in firearm cases.

(a) The Arkansas Public Defender Commission shall defend a resident of Arkansas who is prosecuted by the United States Government after January 1, 2013, for any federal law, rule, regulation, or order relating to the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition owned or manufactured in violation of § 5-73-134 or § 12-15-107.

(b) If the defendant retains private counsel in his or her defense against prosecution, the Arkansas Public Defender Commission shall be relieved as counsel.

SECTION 7. DO NOT CODIFY. SEVERABILITY. The provisions of this act are severable, and if any provision is held invalid, the remainder shall stand.

/s/Ballinger