

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

HOUSE BILL 1752

5 By: Representative Ballinger  
6

## For An Act To Be Entitled

8 AN ACT TO REQUIRE STATE AGENCIES AND PUBLIC OFFICERS  
9 TO DISREGARD UNCONSTITUTIONAL OVERREACHES OF POWER;  
10 TO PROTECT THE CONSTITUTIONAL RIGHTS FO ARKANSAS; TO  
11 PREVENT THE FEDERAL GOVERNMENT FROM REGULATING THE  
12 MANUFACTURE, ASSEMBLY, AND TRADE OF FIREARMS WITHIN  
13 THE BORDERS OF ARKANSAS; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 THE ARKANSAS SECOND AMENDMENT LIBERTIES  
17 SAFEGUARDS ACT.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

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

### Chapter 21 – Jurisdiction Over Firearm Regulation

#### 4-21-101. Scope.

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27 (a)(1) The Tenth Amendment to the United States Constitution  
28 guarantees to the states and their people all powers not granted to the  
29 federal government elsewhere in the United States Constitution and reserves  
30 to the State of Arkansas and its people certain powers as they were  
31 understood at the time that Arkansas was admitted into statehood in 1836.

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

36 (b)(1) The Ninth Amendment to the United States Constitution



1 guarantees to the people rights not granted in the United States Constitution  
2 and reserves to the people of Arkansas certain rights as they were understood  
3 at the time that Arkansas was admitted into statehood in 1836.

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

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

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

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

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

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25 4-21-102. Definitions.

26 (a) As used in this chapter:

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

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

35 (3) "Generic and insignificant part" means a small component  
36 used in the manufacture of a firearm, including, but not limited to, a

1 spring, a screw, a nut, or a pin; and

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

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7 4-21-103. Prohibitions.

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

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

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

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

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

34 (c) Firearms accessories that are imported into Arkansas from another  
35 state and that are subject to federal regulation as being in interstate  
36 commerce do not subject a firearm to federal regulation under interstate

1 commerce because they are attached to or used in conjunction with a firearm  
2 in Arkansas.

3 (d) This section does not apply to:

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

5 (2) A firearm that has a bore diameter greater than one and one-  
6 half inches (1 1/2") and that uses smokeless powder, not black powder, as a l  
7 propellant;

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

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

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14 4-21-104. Marketing of firearms.

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

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

21 5-73-134. Unlawful enforcement of federal statutes.

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

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

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33 SECTION 3. Arkansas Code Title 12, Chapter 15, Subchapter 1, is  
34 amended to add a new section to read as follows:

35 12-15-101. Prohibition against federal firearm regulation.

36 A federal law, rule, regulation, or order created or effective on or

1 after January 1, 2013, shall be unenforceable within the borders of Arkansas  
2 if the law, rule, regulation, or order attempts to:

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

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

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

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

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

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

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

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

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

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

34 (3) Statewide arrest powers for certified law enforcement officers  
35 will be in effect only when the officer is working outside his or her  
36 jurisdiction at the request of or with the permission of the municipal or

1 county law enforcement agency having jurisdiction in the locale where the  
 2 officer is assisting or working by request.

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

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

11 (i) A certified law enforcement officer shall not make an arrest under  
 12 § 5-73-134 without a warrant.

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

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

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

22 (b) If the defendant retains private counsel in his or her defense  
 23 against prosecution, the Attorney General shall be relieved as counsel.

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