

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

As Engrossed: H3/8/13

A Bill

HOUSE BILL 1752

5 By: Representatives Ballinger, Alexander, D. Altes, Barnett, Bell, Bragg, Cozart, Davis, Dotson, D.
6 Douglas, Farrer, Fite, Harris, Hobbs, Hutchison, Jean, Lowery, D. Meeks, S. Meeks, Miller, Payton,
7 Scott, Womack
8 By: Senators J. Woods, J. English, B. King, Rapert, G. Stubblefield
9

For An Act To Be Entitled

11 AN ACT TO REQUIRE STATE AGENCIES AND PUBLIC OFFICERS
12 TO DISREGARD UNCONSTITUTIONAL OVERREACHES OF POWER;
13 TO PROTECT THE CONSTITUTIONAL RIGHTS FO ARKANSAS; TO
14 PREVENT THE FEDERAL GOVERNMENT FROM REGULATING THE
15 MANUFACTURE, ASSEMBLY, AND TRADE OF FIREARMS WITHIN
16 THE BORDERS OF ARKANSAS; AND FOR OTHER PURPOSES.
17
18

Subtitle

19 THE ARKANSAS SECOND AMENDMENT LIBERTIES
20 SAFEGUARDS ACT.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

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

Chapter 21 – Jurisdiction Over Firearm Regulation

4-21-101. Scope.

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

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



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

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

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

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

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

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

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

27
28 4-21-102. Definitions.

29 (a) As used in this chapter:

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

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

1 illumination;

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

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

9
10 4-21-103. Prohibitions.

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

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

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

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

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

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

6 (d) This section does not apply to:

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

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

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

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

16
17 4-21-104. Marketing of firearms.

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

21
22 SECTION 2. Arkansas Code Title 5, Chapter 73, Subchapter 1, is amended
23 to create a new section to read as follows:

24 5-73-134. Unlawful enforcement of federal statutes.

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

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

35
36 SECTION 3. Arkansas Code Title 12, Chapter 15, Subchapter 1, is

1 amended to add a new section to read as follows:

2 12-15-101. Prohibition against federal firearm regulation.

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

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

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

10

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

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

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

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

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

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

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

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

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

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

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

14 (i) A certified law enforcement officer shall not make an arrest under
15 § 5-73-134 without a warrant.

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

19 25-16-714. Defense of an Arkansas resident in firearm cases.

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

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

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

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32 */s/Ballinger*