

HOUSE BILL NO. 246

INTRODUCED BY J. BONIEK, BENNETT, BUTCHER, CURTISS, RANDALL, WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM FEDERAL REGULATION UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES A FIREARM, A FIREARM ACCESSORY, OR AMMUNITION MANUFACTURED AND RETAINED IN MONTANA; PROVIDING FOR THE DUTIES OF THE ATTORNEY GENERAL; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Firearms Freedom Act".

NEW SECTION. **Section 2. Legislative declarations of authority.** The legislature declares that the authority for [sections 1 through 7] is the following:

(1) The 10th 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 to the state and people of Montana certain powers as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those powers is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(2) The ninth amendment to the United States constitution guarantees to the people rights not granted in the constitution and reserves to the people of Montana certain rights as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those rights is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(3) The regulation of intrastate commerce is vested in the states under the 9th and 10th amendments to the United States constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition.

(4) 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 Montana was admitted to statehood in 1889, and the guaranty of the right is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(5) Article II, section 12, of the Montana constitution clearly secures to Montana citizens, and prohibits government interference with, the right of individual Montana citizens to keep and bear arms. This constitutional protection is unchanged from the 1889 Montana constitution, which was approved by congress and the people of Montana, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Borders of Montana" means the boundaries of Montana described in Article I, section 1, of the 1889 Montana constitution.

(2) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are 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 parts" includes but is not limited to springs, screws, nuts, and pins.

(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.

NEW SECTION. **Section 4. Prohibitions.** A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Montana from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Montana and incorporation into a firearm, a

firearm accessory, or ammunition manufactured in Montana does not subject the firearm, firearm accessory, or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Montana from those materials. Firearms accessories that are imported into Montana 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 Montana.

NEW SECTION. Section 5. Exceptions. [Section 4] does not apply to:

- (1) a firearm that cannot be carried and used by one person;
- (2) a firearm that has a bore diameter greater than 1 1/2 inches 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) a firearm that discharges two or more projectiles with one activation of the trigger or other firing device.

NEW SECTION. Section 6. Marketing of firearms. A firearm manufactured or sold in Montana under [sections 1 through 7] must have the words "Made in Montana" clearly stamped on a central metallic part, such as the receiver or frame.

NEW SECTION. Section 7. Duties of the attorney general. ~~(1) A Montana citizen whom the government of the United States attempts to prosecute, under the congressional power to regulate interstate commerce, for violation of a federal law concerning the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition manufactured and retained within Montana must be defended in full by the Montana attorney general.~~

~~(2)~~ Upon written notification to the Montana attorney general by a Montana citizen of intent to manufacture a firearm, a firearm accessory, or ammunition to which [sections 1 through 7] apply, the attorney general shall seek a declaratory judgment from the federal district court for the district of Montana that [sections

1 through 7] are consistent with the United States constitution.

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 7].

NEW SECTION. **Section 9. Applicability.** [This act] applies to firearms, firearms accessories, and ammunition that are manufactured, as defined in [section 3], and retained in Montana after October 1, 2009.

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