

By: Murr

H.B. No. 3361

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the enforcement of certain federal firearm, firearm  
3 accessory, and firearm ammunition regulations within the State of  
4 Texas; creating a criminal offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. This Act shall be known as the Second Amendment  
7 Preservation Act.

8 SECTION 2. The Legislature of the State of Texas finds that:

9 (1) The Tenth Amendment to the United States  
10 Constitution reserves to the states and the people all powers not  
11 granted to the federal government elsewhere in the constitution, as  
12 those powers were understood at the time that Texas was admitted to  
13 statehood in 1845. The guaranty of those powers is a matter of  
14 contract between the state and people of Texas and the United States  
15 dating from the time Texas became a state.

16 (2) The Ninth Amendment to the United States  
17 Constitution guarantees to the people rights not enumerated in the  
18 constitution, as those rights were understood at the time Texas  
19 became a state. The guaranty of those rights is a matter of contract  
20 between the state and people of Texas and the United States dating  
21 from the time Texas became a state.

22 (3) The regulation of intrastate commerce is vested in  
23 the states under the Ninth and Tenth Amendments to the United States  
24 Constitution if not expressly preempted by federal law. The United

1 States Congress has not expressly preempted state regulation of  
2 intrastate commerce relating to the manufacture on an intrastate  
3 basis of firearms, firearms accessories, and ammunition.

4 (4) The Second Amendment to the United States  
5 Constitution guarantees the right of the people to keep and bear  
6 arms, as that right was understood at the time Texas became a state.  
7 The guaranty of that right is a matter of contract between the state  
8 and people of Texas and the United States dating from the time Texas  
9 became a state.

10 (5) Section 23, Article I, Texas Constitution, secures  
11 to Texas citizens the right to keep and bear arms. That  
12 constitutional protection is unchanged from the date the  
13 constitution was adopted in 1876.

14 SECTION 3. The Legislature of the State of Texas declares  
15 that a firearm, a firearm accessory, or ammunition manufactured in  
16 Texas, as described by Chapter 2003, Business & Commerce Code, as  
17 added by this Act, that remains within the borders of Texas:

18 (1) has not traveled in interstate commerce; and

19 (2) is not subject to federal law or federal  
20 regulation, including registration, under the authority of the  
21 United States Congress to regulate interstate commerce.

22 SECTION 4. Title 99, Business & Commerce Code, is amended by  
23 adding Chapter 2003 to read as follows:

24 CHAPTER 2003. INTRASTATE MANUFACTURE OF A FIREARM, A FIREARM  
25 ACCESSORY, OR AMMUNITION

26 Sec. 2003.001. DEFINITIONS. In this chapter:

27 (1) "Firearm accessory" has the meaning assigned by

1 Section 40.02, Penal Code.

2 (2) "Generic and insignificant part" means an item  
3 that has manufacturing or consumer product applications other than  
4 inclusion in a firearm, a firearm accessory, or ammunition. The  
5 term includes a spring, screw, nut, and pin.

6 (3) "Manufacture" includes forging, casting,  
7 machining, or another process for working a material.

8 Sec. 2003.002. MEANING OF "MANUFACTURED IN THIS STATE." (a)  
9 For the purposes of this chapter, a firearm, a firearm accessory, or  
10 ammunition is manufactured in this state if the item is  
11 manufactured:

12 (1) in this state from basic materials; and

13 (2) without the inclusion of any part imported from  
14 another state other than a generic and insignificant part.

15 (b) For the purposes of this chapter, a firearm is  
16 manufactured in this state if it is manufactured as described by  
17 Subsection (a) without regard to whether a firearm accessory  
18 imported into this state from another state is attached to or used  
19 in conjunction with it.

20 Sec. 2003.003. NOT SUBJECT TO FEDERAL REGULATION. (a) A  
21 firearm, a firearm accessory, or ammunition that is manufactured in  
22 this state and remains in this state is not subject to federal law  
23 or federal regulation, including registration, under the authority  
24 of the United States Congress to regulate interstate commerce.

25 (b) A basic material from which a firearm, a firearm  
26 accessory, or ammunition is manufactured in this state, including  
27 unmachined steel and unshaped wood, is not a firearm, a firearm

1 accessory, or ammunition and is not subject to federal regulation  
2 under the authority of the United States Congress to regulate  
3 interstate commerce as if it actually were a firearm, a firearm  
4 accessory, or ammunition.

5 Sec. 2003.004. EXCEPTIONS. This chapter does not apply to:

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

8 (2) a firearm that has a bore diameter greater than 1.5  
9 inches and that uses smokeless powder and not black powder as a  
10 propellant;

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

14 (4) any firearm that is capable of shooting more than  
15 two shots automatically, without manual reloading, by a single  
16 function of the trigger.

17 Sec. 2003.005. MARKETING OF FIREARMS. A firearm  
18 manufactured and sold in this state must have the words "Made in  
19 Texas" clearly stamped on a central metallic part, such as the  
20 receiver or frame.

21 Sec. 2003.006. ATTORNEY GENERAL. On written notification  
22 to the attorney general by a United States citizen who resides in  
23 this state of the citizen's intent to manufacture a firearm, a  
24 firearm accessory, or ammunition to which this chapter applies, the  
25 attorney general shall seek a declaratory judgment from a federal  
26 district court in this state that this chapter is consistent with  
27 the United States Constitution.

1 SECTION 5. Title 8, Penal Code, is amended by adding Chapter  
2 40 to read as follows:

3 CHAPTER 40. THE TEXAS FIREARM PROTECTION ACT

4 Sec. 40.01. SHORT TITLE. This chapter may be cited as the  
5 Texas Firearm Protection Act.

6 Sec. 40.02. DEFINITIONS. In this chapter:

7 (1) "Firearm" has the meaning assigned by Section  
8 46.01.

9 (2) "Firearm accessory" means an item that is used in  
10 conjunction with or mounted on a firearm but is not essential to the  
11 basic function of the firearm. The term includes a telescopic or  
12 laser sight, magazine, flash or sound suppressor, folding or  
13 aftermarket stock or grip, speedloader, ammunition carrier, and  
14 light for target illumination.

15 Sec. 40.03. STATE AND LOCAL GOVERNMENT POLICY REGARDING  
16 ENFORCEMENT OF FEDERAL FIREARM LAWS. (a) This section applies to:

17 (1) the State of Texas, including an agency,  
18 department, commission, bureau, board, office, council, court, or  
19 other entity that is in any branch of state government and that is  
20 created by the constitution or a statute of this state, including a  
21 university system or a system of higher education;

22 (2) the governing body of a municipality, county, or  
23 special district or authority;

24 (3) an officer, employee, or other body that is part of  
25 a municipality, county, or special district or authority, including  
26 a sheriff, municipal police department, municipal attorney, or  
27 county attorney; and

1           (4) a district attorney or criminal district attorney.

2           (b) An entity described by Subsection (a) may not adopt a  
3 rule, order, ordinance, or policy under which the entity enforces,  
4 or by consistent action allows the enforcement of, a federal  
5 statute, order, rule, or regulation enacted on or after January 1,  
6 2021, that purports to regulate a firearm, a firearm accessory, or  
7 firearm ammunition if the statute, order, rule, or regulation  
8 imposes a prohibition, restriction, or other regulation, such as a  
9 capacity or size limitation, a registration requirement, or a  
10 background check, that does not exist under the laws of this state.

11           (c) No entity described by Subsection (a) and no person  
12 employed by or otherwise under the direction or control of the  
13 entity may enforce or attempt to enforce any federal statute,  
14 order, rule, or regulation described by Subsection (b).

15           (d) An entity described by Subsection (a) may not receive  
16 state grant funds if the entity adopts a rule, order, ordinance, or  
17 policy under which the entity enforces any federal law described by  
18 Subsection (b) or, by consistent actions, allows the enforcement of  
19 any federal law described by Subsection (b). State grant funds for  
20 the entity shall be denied for the fiscal year following the year in  
21 which a final judicial determination in an action brought under  
22 this section is made that the entity has violated Subsection (b).

23           (e) Any citizen residing in the jurisdiction of an entity  
24 described by Subsection (a) may file a complaint with the attorney  
25 general if the citizen offers evidence to support an allegation  
26 that the entity has adopted a rule, order, ordinance, or policy  
27 under which the entity enforces a federal law described by

1 Subsection (b) or that the entity, by consistent actions, allows  
2 the enforcement of a law described by Subsection (b). The citizen  
3 must include with the complaint any evidence the citizen has in  
4 support of the complaint.

5 (f) If the attorney general determines that a complaint  
6 filed under Subsection (e) against an entity described by  
7 Subsection (a) is valid, to compel the entity's compliance with  
8 this section the attorney general may file a petition for a writ of  
9 mandamus or apply for other appropriate equitable relief in a  
10 district court in Travis County or in a county in which the  
11 principal office of the entity is located. The attorney general may  
12 recover reasonable expenses incurred in obtaining relief under this  
13 subsection, including court costs, reasonable attorney's fees,  
14 investigative costs, witness fees, and deposition costs.

15 (g) An appeal of a suit brought under Subsection (f) is  
16 governed by the procedures for accelerated appeals in civil cases  
17 under the Texas Rules of Appellate Procedure. The appellate court  
18 shall render its final order or judgment with the least possible  
19 delay.

20 (h) A person commits an offense if, in the person's official  
21 capacity as an officer of an entity described by Subsection (a), or  
22 as a person employed by or otherwise under the direction or control  
23 of the entity, or under color of law, the person knowingly enforces  
24 or attempts to enforce any federal statute, order, rule, or  
25 regulation described by Subsection (b). An offense under this  
26 subsection is a Class A misdemeanor.

27 SECTION 6. Chapter 2003, Business & Commerce Code, as added

1 by this Act, applies only to a firearm, a firearm accessory, or  
2 ammunition that is manufactured on or after the effective date of  
3 this Act.

4         SECTION 7. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2021.