

By: Berman

H.B. No. 298

A BILL TO BE ENTITLED

AN ACT

1
2 relating to exempting the intrastate manufacture of a firearm, a
3 firearm accessory, or ammunition from federal regulation.

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

5 SECTION 1. FINDINGS. (a) The Legislature of the State of
6 Texas makes findings as stated in this section.

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

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

22 (d) The regulation of intrastate commerce is vested in the
23 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 (e) The Second Amendment to the United States Constitution
5 reserves to the people the right to keep and bear arms as that right
6 was understood at the time that Texas became a state, and the
7 guaranty of the right is a matter of contract between the state and
8 people of Texas and the United States dating from the time Texas
9 became a state.

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

14 SECTION 2. DECLARATION. The Legislature of the State of
15 Texas declares that a firearm, a firearm accessory, or ammunition
16 manufactured in Texas, as described by Chapter 2003, Business &
17 Commerce Code, as added by this Act, that remains within the borders
18 of Texas:

- 19 (1) has not traveled in interstate commerce; and
20 (2) is not subject to federal law or federal
21 regulation, including registration, under the authority of the
22 United States Congress to regulate interstate commerce.

23 SECTION 3. Title 99, Business & Commerce Code, is amended by
24 adding Chapter 2003 to read as follows:

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

27 Sec. 2003.001. DEFINITIONS. In this chapter:

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

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

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

13 Sec. 2003.002. MEANING OF "MANUFACTURED IN THIS STATE." (a)
14 For the purposes of this chapter, a firearm, a firearm accessory, or
15 ammunition is manufactured in this state if the item is
16 manufactured:

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

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

20 (b) For the purposes of this chapter, a firearm is
21 manufactured in this state if it is manufactured as described by
22 Subsection (a) without regard to whether a firearm accessory
23 imported into this state from another state is attached to or used
24 in conjunction with it.

25 Sec. 2003.003. NOT SUBJECT TO FEDERAL REGULATION. (a) A
26 firearm, a firearm accessory, or ammunition that is manufactured in
27 this state and remains in this state is not subject to federal law

1 or federal regulation, including registration, under the authority
2 of the United States Congress to regulate interstate commerce.

3 (b) A basic material from which a firearm, a firearm
4 accessory, or ammunition is manufactured in this state, including
5 unmachined steel and unshaped wood, is not a firearm, a firearm
6 accessory, or ammunition and is not subject to federal regulation
7 under the authority of the United States Congress to regulate
8 interstate commerce as if it actually were a firearm, a firearm
9 accessory, or ammunition.

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

11 (1) a firearm that cannot be carried and used by one
12 person;

13 (2) a firearm that has a bore diameter greater than 1.5
14 inches and that uses smokeless powder and not black powder as a
15 propellant;

16 (3) ammunition with a projectile that explodes using
17 an explosion of chemical energy after the projectile leaves the
18 firearm; or

19 (4) a firearm that discharges two or more projectiles
20 with one activation of the trigger or other firing device.

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

24 Sec. 2003.006. ATTORNEY GENERAL. (a) The attorney general
25 shall defend a citizen of this state whom the federal government
26 attempts to prosecute, claiming the power to regulate interstate
27 commerce, for violation of a federal law concerning the

1 manufacture, sale, transfer, or possession of a firearm, a firearm
2 accessory, or ammunition manufactured and retained in this state.

3 (b) On written notification to the attorney general by a
4 citizen of the citizen's intent to manufacture a firearm, a firearm
5 accessory, or ammunition to which this chapter applies, the
6 attorney general shall seek a declaratory judgment from a federal
7 district court in this state that this chapter is consistent with
8 the United States Constitution.

9 SECTION 4. This Act applies only to a firearm, a firearm
10 accessory, as that term is defined by Section 2003.001, Business &
11 Commerce Code, as added by this Act, and ammunition that is
12 manufactured on or after the effective date of this Act.

13 SECTION 5. This Act takes effect September 1, 2011.