

1 **UTAH STATE-MADE FIREARMS PROTECTION**

2 **ACT**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Margaret Dayton**

6 House Sponsor: Stephen E. Sandstrom

7

LONG TITLE

8 **Committee Note:**

9 The Natural Resources, Agriculture, and Environment Interim Committee
10 recommended this bill.

11 **General Description:**

12 This bill addresses the manufacture of firearms within the state for in-state use.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ addresses the legal status of a firearm manufactured in the state for use within the
- 16 state;
- 17 ▶ defines terms;
- 18 ▶ provides that a firearm or one of various firearm-related items manufactured in the
- 19 state for in-state use is not subject to federal firearms laws and regulations;
- 20 ▶ exempts from in-state manufacturing some firearms and ammunition; and
- 21 ▶ requires certain markings on a firearm manufactured in the state for use within the
- 22 state.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides an immediate effective date.



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **53-5b-101**, Utah Code Annotated 1953

31 **53-5b-102**, Utah Code Annotated 1953

32 **53-5b-103**, Utah Code Annotated 1953

33 **53-5b-201**, Utah Code Annotated 1953

34 **53-5b-202**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **53-5b-101** is enacted to read:

38 **CHAPTER 5b. UTAH STATE-MADE FIREARMS PROTECTION ACT**

39 **Part 1. General Provisions**

40 **53-5b-101. Title.**

41 This chapter is known as the "Utah State-Made Firearms Protection Act."

42 Section 2. Section **53-5b-102** is enacted to read:

43 **53-5b-102. Legal considerations.**

44 In reviewing any matter covered by this chapter, a court shall consider the following:

45 (1) The tenth amendment to the United States Constitution guarantees to the state and
46 its people all powers not granted to the federal government elsewhere in the Constitution and
47 reserves to the state and people of Utah certain powers as they were understood at the time that
48 Utah was admitted to statehood.

49 (2) The guarantee of powers to the state and its people under the tenth amendment is a
50 matter of contract between the state and people of Utah and the United States as of the time of
51 statehood.

52 (3) The ninth amendment to the United States Constitution guarantees to the people
53 rights not granted in the Constitution and reserves to the people of Utah certain rights as they
54 were understood at the time that Utah was admitted to statehood.

55 (4) The guarantee of rights to the people under the ninth amendment is a matter of
56 contract between the state and people of Utah and the United States as of the time of statehood.

57 (5) The regulation of intrastate commerce is vested in the state under the ninth and
58 tenth amendments to the United States Constitution.

59 (6) The second amendment to the United States Constitution reserves to the people the
60 right to keep and bear arms as that right was understood at the time that Utah was admitted to
61 statehood, and the guarantee of the right is a matter of contract between the state and people of
62 Utah and the United States as of the time of statehood.

63 (7) The Utah Constitution clearly secures to Utah citizens, and prohibits government
64 interference with, the right of individual Utah citizens to keep and bear arms.

65 (8) A personal firearm, a firearm action or receiver, a firearm accessory, or ammunition
66 that is manufactured commercially or privately in the state to be used or sold within the state is
67 not subject to federal law or federal regulation, including registration, under the authority of
68 congress to regulate interstate commerce.

69 (9) The Legislature declares that a firearm, a firearm action or receiver, a firearm
70 accessory, and ammunition described in Subsection (8) does not travel in interstate commerce.

71 (10) The importation into the state of generic and insignificant parts and those parts'
72 incorporation into a firearm, a firearm action or receiver, a firearm accessory, or ammunition
73 manufactured in the state does not subject the firearm, firearm accessory, firearm action or
74 receiver, or ammunition to federal law or regulation.

75 (11) Basic materials, including unmachined steel and unshaped wood, are not firearms,
76 firearm actions or receivers, firearms accessories, or ammunition.

77 (12) Trade in basic materials is not subject to congressional authority to regulate
78 firearms, firearm actions or receivers, firearms accessories, and ammunition as if the basic
79 materials were actually firearms, firearm actions or receivers, firearms accessories, or
80 ammunition.

81 (13) Congress's authority to regulate interstate commerce in basic materials does not
82 include authority to regulate firearms, firearm actions or receivers, firearms accessories, and
83 ammunition made in the state from basic materials.

84 (14) The attachment or use of firearms accessories in conjunction with a firearm
85 manufactured in the state does not subject the firearm to federal regulation under congress's
86 power to regulate interstate commerce, without regard to whether the firearms accessories are
87 themselves subject to federal regulation.

88 Section 3. Section **53-5b-103** is enacted to read:

89 **53-5b-103. Definitions.**

90 As used in this chapter:

91 (1) "Firearm" means a device from which is expelled a projectile by action of an
92 explosive.

93 (2) "Firearm accessory" means an item that is used in conjunction with or mounted
94 upon a firearm, firearm action, or firearm receiver but is not essential to the basic function of a
95 firearm, including:

96 (a) a telescopic or laser sight;

97 (b) a magazine;

98 (c) a flash or sound suppressor;

99 (d) a folding or aftermarket stock or grip;

100 (e) a speed-loader;

101 (f) an ammunition carrier; and

102 (g) a light for target illumination.

103 (3) "Generic and insignificant parts:"

104 (a) means parts that have other manufacturing or consumer product applications; and

105 (b) includes:

106 (i) springs;

107 (ii) screws;

108 (iii) nuts; and

109 (iv) pins.

110 (4) "Manufactured" means creating a firearm, a firearm action or receiver, a firearm
111 accessory, or ammunition from basic materials for functional usefulness, including:

112 (a) forging;

113 (b) casting;

114 (c) machining; and

115 (d) another process for working materials.

116 Section 4. Section **53-5b-201** is enacted to read:

117 **Part 2. Manufacturing Firearms**

118 **53-5b-201. Intrastate firearm manufacturing.**

119 (1) This chapter applies to a firearm, a firearm action or receiver, a firearm accessory,
120 or ammunition that is manufactured in the state to remain in the state from basic materials that

121 can be manufactured without the inclusion of any significant parts imported into the state.
122 (2) This chapter does not apply to:
123 (a) a firearm that cannot be carried and used by one person;
124 (b) a firearm that has a bore diameter greater than 1-1/2 inches and that uses smokeless
125 powder, not black powder, as a propellant;
126 (c) a firearm that discharges two or more projectiles with one activation of the trigger
127 or other firing device, other than a shotgun; or
128 (d) ammunition with a projectile that explodes using an explosion of chemical energy
129 after the projectile leaves the firearm.
130 Section 5. Section **53-5b-202** is enacted to read:
131 **53-5b-202. Required markings.**
132 A firearm, firearm action, or firearm receiver manufactured or sold in Utah under this
133 chapter must have the words "Made in Utah" or "Made in UT" clearly stamped on a central
134 metallic part, such as the receiver or frame.
135 Section 6. **Effective date.**
136 If approved by two-thirds of all the members elected to each house, this bill takes effect
137 upon approval by the governor, or the day following the constitutional time limit of Utah
138 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
139 the date of veto override.

Legislative Review Note
as of 11-19-09 9:46 AM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This legislation addresses the intrastate manufacture of firearms for intrastate use. In regulating the manufacture and sale of such firearms, the bill also purports to limit the reach of federal firearms laws. Federal firearms laws currently impose restrictions on the manufacture

of firearms, including a requirement that every manufacturer have a federal license. 18 U.S.C. § 923(a). This licensing provision carries no limitation that would apply to only interstate manufacture. Additionally, the federal laws include a provision declaring the federal law supreme in the event a state law conflicts with the federal provisions. 18 U.S.C. § 927. These provisions, coupled with the United States Constitution's Supremacy Clause, suggest that this legislation has a high probability of being held to be unconstitutional under existing law. U.S. Const. art. VI.

While this legislation limits itself to wholly intrastate conduct, purportedly beyond the reach of Congress's power under the Commerce Clause to the United States Constitution, judicial interpretation of federal firearms laws has held that Congress has the power to regulate wholly intrastate conduct. *See, e.g. United States v. Lebman*, 464 F.2d 68, 71 (5th Cir. 1972) (stating that "Congress intended to and had the authority, under its commerce power, to regulate the intrastate transactions at issue here."). This interpretation of federal firearms laws is in keeping with the United States Supreme Court's rationale in allowing regulation of other wholly intrastate conduct. *See, e.g. Wickard v. Filburn*, 317 U.S. 111, 128-29 (1942) (holding that Congress may regulate wholly intrastate conduct if the failure to regulate that conduct would "have a substantial effect in defeating and obstructing" Congress's purpose in regulation of other, interstate conduct.). This long-running view of the Commerce Clause has recently been sustained by the United States Supreme Court in *Gonzales v. Raich*, 545 U.S. 1 (2005). In the context of the federal firearms laws, one court has said, "The Congressional purpose, set forth in the legislative history, is to assist the states effectively to regulate firearms traffic within their borders. Illegal intrastate transfer of firearms is part of a pattern which affects the national traffic and Congress can validly enact a comprehensive program regulating all transfers of firearms." *United States v. Petrucci*, 486 F.2d 329, 331 (9th Cir. 1973) (citations omitted).

Congress has provided a comprehensive system for regulating the manufacture of firearms, including broad licensing requirements. Congress has also provided that contrary state laws are invalid. Existing judicial interpretations of Congress's power to regulate intrastate conduct allow the manufacture of firearms to be restricted by federal law. Accordingly, because this legislation purports to limit the reach of the federal law and is inconsistent with the federal firearms provisions, this legislation is highly likely to be held to be unconstitutional under the United States Constitution's Supremacy Clause.

Office of Legislative Research and General Counsel

S.B. 11 - Utah State-made Firearms Protection Act

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. The Legislative General Counsel has attached a detailed Legislative Review Note to this bill. If provisions in the bill are challenged in court, there will be costs associated with defending those provisions.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
