

Regular Session, 2013

HOUSE BILL NO. 45

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WEAPONS/FIREARMS: Creates the La. Manufactured Firearms and Ammunition Act

1 AN ACT

2 To enact Part V of Chapter 9 of Title 40 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 40:1821 through 1833, relative to the regulation of firearms; to
4 create the Louisiana Manufactured Firearms and Ammunition Act; to provide for the
5 issuance of a license to sell or manufacture Louisiana firearms, firearm accessories,
6 and ammunition; to provide for qualifications for manufacturers and dealers; to
7 provide for applicability; to provide for licensing fees; to create the Louisiana
8 Manufactured Firearms and Ammunition Fund; to provide for the use of monies
9 deposited into that fund; to provide criteria for purchasing a Louisiana manufactured
10 firearm; to provide for the seizure and forfeiture of certain firearms; to provide for
11 criteria for Louisiana firearms manufacturing facilities; to provide for rulemaking;
12 to provide for definitions; to provide the interpretation of statutory construction; to
13 provide for appeals of decisions of the department; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Part V of Chapter 9 of Title 40 of the Louisiana Revised Statutes of 1950,
17 comprised of R.S. 40:1821 through 1833, is hereby enacted to read as follows:

18 PART V. LOUISIANA MANUFACTURED FIREARMS AND AMMUNITION

19 §1821. Short title

20 This Part shall be known and may be cited as the "Louisiana Manufactured
21 Firearms and Ammunition Act".

1 §1822. Legislative findings

2 (1) The Louisiana Legislature recognizes the authority of the United States
3 Congress to regulate matters of commerce between states, and also recognizes that
4 Article VI, Section 2 of the Constitution of the United States proclaims that such
5 laws made under the authority of the United States shall be the supreme law of the
6 land.

7 (2) The Tenth Amendment of the Constitution of the United States provides
8 that, "[t]he powers not delegated to the United States by the Constitution, nor
9 prohibited by it to the States, are reserved to the States respectively, or to the
10 people."

11 (3) The Ninth Amendment of the Constitution of the United States provides
12 that, "[t]he enumeration in the Constitution, of certain rights, shall not be construed
13 to deny or disparage others retained by the people."

14 (4) In the absence of a constitutional prohibition, or a specific delegation of
15 authority to the United States government, all regulation of intrastate commerce is
16 expressly reserved to the authority of the states.

17 (5) The Second Amendment of the Constitution of the United States provides
18 that, "[a] well regulated Militia, being necessary to the security of a free State, the
19 right of the people to keep and bear Arms, shall not be infringed."

20 (6) Article I, Section 11 of the Constitution of Louisiana provides that, "The
21 right of each citizen to keep and bear arms is fundamental and shall not be infringed.
22 Any restriction on this right shall be subject to strict scrutiny."

23 (7) The state of Louisiana has a compelling interest in protecting and
24 preserving the fundamental rights of its citizens to keep and bear arms. The
25 provisions of this Part are intended to preserve and protect the right to keep and bear
26 arms within the borders of the state of Louisiana.

27 (8) It is the express intention of the Louisiana Legislature that the provisions
28 of this Part shall provide for the manufacturing and sales of certain firearms, firearm

1 accessories, and ammunition which are manufactured solely within the borders of the
2 state of Louisiana.

3 (9) The Louisiana Legislature declares that the provisions of this Part are
4 deemed to be matters of intrastate commerce and are not subject to federal regulation
5 through regulation of commerce between the states.

6 §1823. Definitions

7 A. For the purposes of this Part, the following terms shall have the following
8 meanings:

9 (1) "Department" means the Department of Public Safety and Corrections.

10 (2) "Key firearm components" means the essential components of a firearm,
11 including but not limited to the barrel, trigger, sear, striker, receiver, bolt, and
12 magazine.

13 (3) "Louisiana firearms dealer" means any person who has been issued a
14 dealer's license as provided for in this Part and is engaged in this state in the business
15 of selling any Louisiana manufactured firearm, firearm accessories, or ammunition.

16 (4) "Louisiana manufactured" means creating a firearm, a firearm accessory,
17 or ammunition from basic components for functional usefulness, including but not
18 limited to machining, milling and turning, anodizing and plating, grinding, stamping,
19 assembly and finishing, or other processes for working materials manufactured
20 within the state of Louisiana pursuant to the provisions of this Part.

21 (5) "Louisiana manufactured ammunition" means any projectiles with their
22 fuses, propelling charges, or primers fired from any firearm which is manufactured
23 in Louisiana pursuant to the provisions of this Part.

24 (6) "Louisiana manufactured firearm" means any pistol, revolver, rifle,
25 shotgun, machine gun, or submachine gun, which is designed to fire or is capable of
26 firing fixed cartridge ammunition or from which shot or a projectile is discharged by
27 an explosive and which is manufactured within the state of Louisiana pursuant to the
28 provisions of this Part. "Firearm" shall not include machine guns or other firearms

1 defined and regulated by the provisions of Part I or Part II of Chapter 9 of Title 40
2 of the Louisiana Revised Statutes of 1950.

3 (7) "Louisiana manufactured firearm accessories" means items that are used
4 in conjunction with or mounted upon a firearm but are not essential to the basic
5 function of a firearm, including but not limited to telescopic or laser sights,
6 magazines, flash or sound suppressors, folding or aftermarket stocks and grips,
7 ammunition carriers, and lights for target illumination which are manufactured in
8 Louisiana pursuant to the provisions of this Part.

9 (8) "Louisiana manufacturing firearms facility" is a facility which has been
10 issued a permit for the production of Louisiana manufactured firearms, firearm
11 accessories, and ammunition.

12 (9) "Non-key firearm components" includes but is not limited to springs,
13 screws, nuts, and pins.

14 §1824. License to sell Louisiana firearms, firearm accessories, or ammunition;
15 qualifications for licensure

16 A. No person shall sell Louisiana manufactured firearms, Louisiana
17 manufactured firearm accessories, or Louisiana manufactured ammunition without
18 having first been issued a license by the department to sell Louisiana manufactured
19 firearms, firearm accessories, or ammunition.

20 B. The holder of a Louisiana firearms dealer's license issued pursuant to the
21 provisions of this Section shall authorize the holder of that license to sell Louisiana
22 manufactured firearms, firearm accessories, and ammunition pursuant to the
23 provisions of this Part.

24 C. The holder of a Louisiana firearms dealer's license issued pursuant to the
25 provisions of this Section shall maintain records of the shipment, receipt, sale, or
26 other disposition or acquisition of Louisiana manufactured firearms, firearm
27 accessories, and ammunition at his place of business for such period, and in such
28 form, as the department requires through rules adopted pursuant to the provisions of
29 R.S. 40:1826.

1 D. To qualify for a license to sell Louisiana manufactured firearms, firearm
2 accessories, or ammunition, a Louisiana resident shall:

3 (1) Make sworn application to the deputy secretary of public safety services
4 of the department. The submission of false or misleading information on the
5 application or any documents submitted with the application shall be grounds for the
6 denial or revocation of a Louisiana firearm dealer's license. Additionally, the
7 applicant who provides false or misleading information shall be fined not more than
8 two thousand dollars.

9 (2) Be a resident of the state.

10 (3) Be twenty-one years of age or older.

11 (4) Not suffer from a mental or physical infirmity due to disease, illness, or
12 condition which prevents the safe handling of a firearm.

13 (5) Not be ineligible to possess a firearm by virtue of having been convicted
14 of a felony.

15 (6) Not have been committed, either voluntarily or involuntarily, for the
16 abuse of a controlled dangerous substance, as defined by R.S. 40:961 and 964, or
17 been found guilty of, or entered a plea of guilty or nolo contendere to a misdemeanor
18 under the laws of this state or similar laws of any other state relating to a controlled
19 dangerous substance within a five-year period immediately preceding the date on
20 which the application is submitted, or be presently charged under indictment or a bill
21 of information for such an offense.

22 (7) Not chronically and habitually use alcoholic beverages to the extent that
23 his normal faculties are impaired. It shall be presumed that an applicant chronically
24 and habitually uses alcoholic beverages to the extent that his normal faculties are
25 impaired if the applicant has been found guilty of, or entered a plea of guilty or nolo
26 contendere to operating a vehicle while intoxicated, or has been admitted, either
27 voluntarily or involuntarily, for treatment as an alcoholic, within the five-year period
28 immediately preceding the date on which the application is submitted, or at any time
29 after the application has been submitted.

1 (8) Not have entered a plea of guilty or nolo contendere to or been found
2 guilty of a crime of violence as defined in R.S. 14:2(B).

3 (9) Not have been convicted of, have entered a plea of guilty or nolo
4 contendere to, or not be charged under indictment or a bill of information for any
5 crime of violence or any crime punishable by imprisonment for a term of one year
6 or greater. A conviction, plea of guilty, or plea of nolo contendere under this
7 Paragraph shall include an expungement of such conviction or a dismissal and
8 conviction set-aside under the provisions of Code of Criminal Procedure Article 893.

9 (10) Not be a fugitive from justice.

10 (11) Not be an unlawful user of, or addicted to, marijuana, depressants,
11 stimulants, or narcotic drugs.

12 (12) Not have been adjudicated to be mentally deficient or been committed
13 to a mental institution.

14 (13) Not be an illegal alien in the United States.

15 (14) Not have been discharged from the Armed Forces of the United States
16 with a discharge characterized as "Under Other than Honorable Conditions", a "Bad
17 Conduct Discharge", or a "Dishonorable Discharge". In the case of Commissioned
18 Officers and Warrant Officers of the United States Armed Forces, the punishment
19 of "Dismissal" rendered subject to a verdict of "guilty" at a trial by military court-
20 martial is deemed to be disqualifying under this Paragraph. For the purposes of this
21 Paragraph, the United States Coast Guard is considered an armed force.

22 (15) Not be ineligible to possess a firearm under 18 U.S.C. 922(g).

23 (16) Not have had a license denied within one year prior to the most recent
24 application.

25 (17) Not have had a license revoked within four years prior to the most
26 recent application.

27 (18) Likely to conduct business as authorized by this Part in complete
28 compliance with the provisions of this Part.

1 (19) Meet any other criteria provided for by rules adopted by the department
2 pursuant to R.S. 40:1827.

3 §1825. License to manufacture Louisiana manufactured firearms, firearm
4 accessories, and ammunition; qualifications for licensure

5 A. No person shall manufacture a Louisiana manufactured firearm, firearm
6 accessory, or ammunition without having first been issued a license to manufacture
7 Louisiana manufactured firearms, firearm accessories, or ammunition issued by the
8 department.

9 B. To qualify for a license to manufacture Louisiana manufactured firearms,
10 firearm accessories, or ammunition, a Louisiana resident shall:

11 (1) Make sworn application to the deputy secretary of public safety services
12 of the department and meet the criteria for licensing provided for in R.S. 40:1824(D)
13 and in rules adopted pursuant to the provisions of R.S. 40:1827. The submission of
14 false or misleading information on the application or any documents submitted with
15 the application shall be grounds for the denial or revocation of a Louisiana firearm
16 dealer's license. Additionally, the applicant who provides false or misleading
17 information shall be fined not more than two thousand dollars.

18 (2) Include with the application a detailed description of the types of
19 Louisiana manufactured firearms, firearm accessories, or ammunition the licensee
20 intends to manufacture.

21 C. The department shall inspect the facility where the Louisiana
22 manufactured firearms, firearm accessories, or ammunition will be manufactured and
23 determine all of the following:

24 (1) That the facility has the capacity to provide for the secure storage of
25 Louisiana manufactured firearms, firearm accessories, and ammunition.

26 (2) That the facility has sufficient means to ensure that the licensee can
27 provide adequate inventory accountability to the department.

28 D. The holder of a Louisiana firearms manufacturer's license issued pursuant
29 to the provisions of this Part shall authorize the holder of that license to manufacture

1 firearms, firearm accessories, and ammunition in Louisiana pursuant to the
2 provisions of this Part.

3 E. The holder of a Louisiana firearms manufacturer's license issued pursuant
4 to the provisions of this Part shall maintain records of the manufacture, shipment,
5 receipt, sale, or other disposition or acquisition of Louisiana manufactured firearms,
6 firearm accessories, and ammunition at his place of business for such period, and in
7 such form, as the department requires through rules adopted pursuant to the
8 provisions of R.S. 40:1826.

9 §1826. Rulemaking authority

10 A. The department shall adopt rules to implement the provisions of this Part.

11 B. All rules shall be adopted pursuant to the Administrative Procedure Act.

12 §1827. Fees

13 A.(1) The department shall assess a fee not to exceed one thousand dollars
14 for a license to manufacture Louisiana manufactured firearms, firearm accessories,
15 or ammunition.

16 (2) The department shall assess a fee not to exceed two hundred dollars for
17 a license to sell Louisiana manufactured firearms, firearm accessories, or
18 ammunition.

19 (3) All fees shall be submitted with the application to cover the
20 administrative costs of the investigation, inspection, and other services required to
21 process and issue the license or permit.

22 (4) The term of the licenses authorized by the provisions of this Part shall be
23 two years.

24 B. Fees received by the department as authorized in this Section and fines
25 collected pursuant to this Part shall be deposited immediately upon receipt into the
26 state treasury.

27 C. After compliance with the requirements of Article VII, Section 9(B) of
28 the Constitution of Louisiana relative to the Bond Security and Redemption Fund,
29 and prior to monies being placed in the state general fund, an amount equal to that

1 deposited as required by Subsection B of this Section shall be credited to a special
2 fund hereby created in the state treasury to be known as the "Louisiana Manufactured
3 Firearms and Ammunition Fund". The monies in this fund shall be used solely as
4 provided for in Subsection D of this Section and only in the amounts appropriated
5 by the legislature. All unexpended and unencumbered monies in this fund at the end
6 of the fiscal year shall remain in such fund. The monies in this fund shall be invested
7 by the state treasurer in the same manner as monies in the state general fund and
8 interest earned on the investment of these monies shall be credited to this fund,
9 again, following compliance with the requirement of Article VII, Section 9(B) of the
10 Constitution of Louisiana relative to the Bond Security and Redemption Fund.

11 D. The monies in the Louisiana Manufactured Firearms and Ammunition
12 Fund shall be used solely to implement the provisions of this Part.

13 §1828. Louisiana manufactured firearms; identification markings

14 A. Each manufacturer of any Louisiana manufactured firearm shall identify
15 the firearm with a number or other identification mark approved by the department
16 and shall mark, stamp, or otherwise place the number or mark thereon in a manner
17 approved by the department.

18 B. The identification mark shall clearly state "made in Louisiana".

19 §1829. Criminal background information

20 A. Prior to selling a Louisiana manufactured firearm, a dealer shall
21 determine whether the purchaser is eligible to purchase a Louisiana manufactured
22 firearm pursuant to the provisions of R.S. 40:1787 and shall request a criminal
23 history records check from the Louisiana Bureau of Criminal Identification and
24 Information as provided for in R.S. 15:587.

25 B. Upon receiving a request pursuant to the provisions of this Section, the
26 bureau shall survey its criminal history records and identification files and make a
27 simultaneous request of the Federal Bureau of Investigation for like information
28 from other jurisdictions. The Louisiana Bureau of Criminal Identification and
29 Information shall provide a report promptly and in writing, but provide only such

1 information as is necessary to specify whether or not that person has been arrested
2 for or convicted of or pled nolo contendere to any crime or crimes, the crime or
3 crimes of which he has been arrested for or convicted or to which he has pled nolo
4 contendere, and the date or dates on which they occurred. The report provided
5 pursuant to the provisions of this Subsection shall include arrests, convictions, or
6 other dispositions, including convictions dismissed pursuant to Code of Criminal
7 Procedure Articles 893 and 894.

8 C.(1) The department shall adopt rules to facilitate that the holder of a
9 Louisiana firearms dealer's license issued pursuant to the provisions of this Part has
10 access to the criminal background information required by the provisions of this
11 Section in real-time or immediate electronic database access.

12 (2) The department may specify in the rules the manner or format the
13 information is conveyed in order to facilitate the sale of Louisiana manufactured
14 firearms, firearm accessories, and ammunition.

15 §1830. Requirements to purchase a Louisiana manufactured firearm

16 A. To purchase a Louisiana manufactured firearm, the purchaser shall make
17 sworn application to purchase a Louisiana manufactured firearm authorizing the
18 dealer to request a criminal records check as provided for in R.S. 40:1829. The
19 submission of false or misleading information on the application or any documents
20 submitted with the application shall subject the applicant to a fine of not more than
21 five thousand dollars, imprisonment with or without hard labor for not more than two
22 years, or both.

23 B. To be eligible to purchase a Louisiana manufactured firearm, a person
24 shall meet all of the following criteria:

25 (1) Be a resident of the state.

26 (2) Be at least eighteen years of age for the purchase of a Louisiana
27 manufactured firearm other than a handgun and at least twenty-one years of age for
28 the purchase of a Louisiana manufactured handgun.

1 (3) Declare that the purchaser is the transferee of the firearm, unless
2 purchased as a gift for a person who is not ineligible to possess a firearm.

3 (4) Not be ineligible to possess a firearm pursuant to the provisions of R.S.
4 14:95.1.

5 (5) Not be a fugitive from justice.

6 (6) Not be an unlawful user of, or addicted to, marijuana, depressants,
7 stimulants, or narcotic drugs.

8 (7) Not have been adjudicated to be mentally deficient or been committed
9 to a mental institution.

10 (8) Not be an illegal alien in the United States.

11 (9) Not having been a citizen of the United States, renounced his citizenship.

12 (10) Not have been discharged from the Armed Forces of the United States
13 with a discharge characterized as "Under Other than Honorable Conditions", a "Bad
14 Conduct Discharge", or a "Dishonorable Discharge". In the case of Commissioned
15 Officers and Warrant Officers of the United States Armed Forces, the punishment
16 of "Dismissal" rendered subject to a verdict of "guilty" at a trial by military court-
17 martial is deemed to be disqualifying under this Paragraph. For the purposes of this
18 Paragraph, the United States Coast Guard is considered an armed force.

19 (11) Not be subject to a court order that restricts the possession or use of a
20 firearm.

21 (12) Not have been convicted in any court of a misdemeanor crime of
22 domestic violence.

23 §1831. Seizure and forfeiture of weapons; disposition thereof

24 A. Any Louisiana manufactured firearm purchased or manufactured in
25 violation of the provisions of this Part may be seized by the department. Upon
26 seizure, the firearm shall be forfeited to the state and may be disposed of by the
27 department pursuant to this Section.

28 B. No Louisiana manufactured firearm shall be sold at public sale. The
29 department may order the Louisiana manufactured firearm to be destroyed, sell it at

1 private sale to any political subdivision of the state or to any officer thereof, or retain
2 it for its own use.

3 §1832. Federal law exclusions; interpretation of Part

4 A. A Louisiana manufactured firearm, firearm accessory, or ammunition that
5 is manufactured commercially or privately in Louisiana pursuant to the provisions
6 of this Part and which remains within the borders of Louisiana is not subject to
7 federal law or federal regulation, including registration, under the authority of
8 Congress to regulate interstate commerce. It is declared by the Louisiana Legislature
9 that those items have not traveled in interstate commerce.

10 B. It is the express intention of the Louisiana Legislature that the courts
11 interpret the provisions of this Part not to apply to interstate commerce only with
12 respect to Louisiana manufactured firearms, firearm accessories, or ammunition
13 which have been manufactured solely within the state of Louisiana from basic
14 materials and are composed only of key firearm components which have not been
15 imported into this state.

16 C. It is the express intention of the Louisiana Legislature that non-key
17 firearm components that have other manufacturing or consumer product applications
18 are not Louisiana manufactured firearms, firearm accessories, or ammunition, and
19 that their importation into Louisiana and incorporation into a firearm, firearm
20 accessory, or ammunition manufactured in Louisiana shall not subject the Louisiana
21 manufactured firearm, firearm accessory, or ammunition to federal regulation.

22 D. It is declared by this legislature that basic components, such as un-
23 machined steel, aluminum and other alloys, plastics, and unshaped wood, are not
24 Louisiana manufactured firearms, firearm accessories, or ammunition and are not
25 subject to congressional authority to regulate Louisiana manufactured firearms,
26 firearm accessories, and ammunition under interstate commerce as if they were
27 actually firearms, firearm accessories, or ammunition.

1 E. The authority of congress to regulate interstate commerce in basic
 2 materials shall not include the authority to regulate Louisiana manufactured firearms,
 3 firearm accessories, and ammunition made in Louisiana from those materials.

4 §1833. Appeals of decisions of the department

5 All appeals from any decision of the department shall be filed within twenty
 6 days of notice of the decision in the Nineteenth Judicial District Court and shall be
 7 reviewed solely on the record.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lopinto

HB No. 45

Abstract: Provides for the licensure of persons to sell or manufacture firearms, firearm accessories, and ammunition manufactured in the state of La., and provides that the selling or manufacturing of such items are not subject to federal regulation.

Present federal law provides for the regulation of the sale of firearms and firearm accessories. Art. I, §8 of the U.S. Constitution also provides that congress has the authority to regulate interstate commerce.

Proposed law establishes an alternative regulatory scheme for the manufacture of firearms, firearm accessories, and ammunition within the boundaries of the state of La.

Proposed law provides that firearms, firearm accessories, and ammunition manufactured in the state of La. and which remain within the borders of La. are not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce.

Proposed law provides definitions including "key firearm components", "La. firearms dealer", "La. manufactured", "La. manufactured ammunition", "La. manufactured firearm", "La. manufactured firearm accessories", "La. manufacturing firearms facility" and "non-key firearm components".

Proposed law establishes qualifications and criteria for the issuance of a license to sell (dealer's license) La. manufactured firearms, firearm accessories, and ammunition.

Proposed law establishes the qualifications and criteria for the issuance of a license to manufacture La. manufactured firearms, firearm accessories, and ammunition. Further provides for the inspection of the manufacturing facility.

Provides that DPS&C may establish rules for the implementation of proposed law.

Proposed law requires dealers and manufacturers to maintain records of the manufacture, shipment, receipt, sale, or other disposition of La. manufactured firearms, firearm accessories, and ammunition.

Proposed law authorizes DPS&C to assess a fee not to exceed \$1,000 for a manufacturer's license and a fee not to exceed \$200 for a dealer's license. Proposed law also creates the La. Manufactured Firearms and Ammunition Fund and provides for the administration and use of the fund.

Proposed law requires that all La. manufactured firearms be identified and stamped "made in La".

Present federal law provides that in order for a person to purchase a firearm, a Federal Firearms Licensee shall submit the name of the prospective buyer to the National Instant Criminal Background Check System (NCIS) maintained by the FBI.

Proposed law creates an alternative background check procedure which originates with state police and provides for access to NCIS.

Proposed law establishes criteria for the purchase of a La. manufactured firearm.

Provides for the seizure and forfeiture of La. manufactured firearms which are purchased or manufactured in violation of proposed law.

Proposed law provides for appeals of decisions of the department to the 19th JDC.

(Adds R.S. 40:1821-1833)