State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

915B0868

SENATE RESOLUTION NO. 6

Introduced by: Senator Nelson

A RESOLUTION, Supporting and encouraging all efforts, public and private, to enjoin the implementation of any regulation that impermissibly and unconstitutionally defines a machine gun to include a bump-stock-type device.

WHEREAS, on December 26, 2018, the Department of Justice amended the regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives to provide that a machine gun includes a bump-stock-type device; and

WHEREAS, in the eighty-four years since passage of the National Firearms Act, the Bureau of Alcohol, Tobacco, Firearms and Explosives has never seen the need to enact regulations further expounding on the statutory meaning of the term machine gun, until now; and

WHEREAS, numerous times in the intervening years, the Bureau of Alcohol, Tobacco, Firearms and Explosives has been asked to determine whether various bump-stock-type devices constitute machine guns under federal law and has consistently acknowledged that such devices, which have no automatically functioning mechanical parts or springs and perform no automatic mechanical function when installed, are not machine guns under federal law; and

WHEREAS, in response to political pressure after the Las Vegas shooting on October 1,

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2017, President Trump ordered that the Bureau of Alcohol, Tobacco, Firearms and Explosives reclassify bump-stock-type devices as machine guns through regulation, despite the clarity of federal law and the Bureau's consistent legal conclusions to the contrary; and

WHEREAS, the regulation requires that any person, including an individual, retailer, wholesaler, and manufacturer, who owns a bump-stock-type device must, prior to the implementation date of the rule, destroy the device or provide for its destruction, without compensation; and

WHEREAS, the regulation makes no exception for any person who legally and legitimately acquired a bump-stock-type device prior to the effective date of the regulation; and

WHEREAS, by defining bump-stock-type devices as machine guns, the regulations are nothing short of a veiled attempt by the federal government to infringe upon the constitutional rights of law-abiding citizens to keep and bear arms; and

WHEREAS, by defining bump-stock-type devices as machine guns, the regulations are arbitrary and capricious, contrary to law, an obfuscation of the manner in which bump stocks operate, and reach an irrational determination, unsupportable in either law or fact; and

WHEREAS, by defining bump-stock-type devices as machine guns, the Bureau of Alcohol, Tobacco, Firearms and Explosives is entrapping citizens who have simply purchased a federally approved firearm accessory; and

WHEREAS, by defining bump-stock-type devices as machine guns and requiring law abiding citizens to surrender their privately held and legally acquired property, without just compensation, the Bureau of Alcohol, Tobacco, Firearms and Explosives is in direct violation of the constitutional takings clause; and

WHEREAS, by defining bump-stock-type devices as machine guns, the Bureau of Alcohol, Tobacco, Firearms and Explosives is engaging in a regulatory activity that falls outside of any

constitutionally enumerated or permissible power:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninety-Fourth Legislature of the State of South Dakota, that the Senate, for all the reasons stated above, supports and encourages all efforts, public and private, to enjoin the implementation of any regulation that impermissibly and unconstitutionally defines a machine gun to include a bump-stock-type device.