

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2138**

BY DELEGATES MCGEEHAN AND FOLK

[Introduced February 8, 2017; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §5-30-1, §5-30-2, §5-30-3, §5-30-4 and §5-30-5, all relating to providing that  
3 all future federal, state and local statutes, ordinances, laws, orders, rules, and any other  
4 actions which attempt to restrict, tax, or regulate the possession, use, discharge in lawful  
5 self-defense, transportation, purchase, acquisition, sale, transfer, ownership, carrying,  
6 manufacture, or repair of firearms, firearm accessories, ammunition and their  
7 accouterments are invalid and unenforceable; making it a felony to attempt to enforce a  
8 federal, state or local statute, ordinance, law, order, rule, or any other action which  
9 attempts to restrict, tax, or regulate possession, use, discharge in lawful self-defense,  
10 transportation, purchase, acquisition, sale, transfer, ownership, carrying, manufacture, or  
11 repair of firearms, firearm accessories, ammunition or their accouterments; prohibiting  
12 such laws, orders, rules, policies and other actions by executive departments and state  
13 agencies, and providing a felony for violation; providing definitions; making findings;  
14 providing penalties; requiring the Attorney General to defend citizens of West Virginia who  
15 are prosecuted by the United States government for violation of a federal law relating to  
16 the possession, use, discharge in lawful self-defense, transportation, purchase,  
17 acquisition, sale, transfer, ownership, carrying, manufacture, or repair of a firearm, a  
18 firearm accessory or ammunition; providing exemptions; providing for retroactivity; and  
19 providing that ex post facto laws are not created.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-4 and §5-30-5, all to read as follows:

**ARTICLE 30. RIGHT TO KEEP AND BEAR ARMS.**

**§5-30-1. Definitions.**

1 For purposes of this article:

2 (1) "Local" is a word that refers to any county in this state as defined in section one, article

3 one, chapter one of this code, any municipality, city, town or village as defined in section two of  
4 that article or any consolidated local government, county consolidation and consolidated county  
5 as defined in section three, article one, chapter seven-a of this code.

6 (2) "Federal" is a word that refers to the government of the United States, the Congress  
7 of the United States, the President of the United States, and any executive department or  
8 regulatory agency thereof.

9 (3) "Executive department or state agency" is a phrase that means any executive  
10 departments defined in section two, article one, chapter five-f of this code, as well as any state  
11 board, agency, committee, or authority other than the Legislature.

**§5-30-2. Legislative findings.**

1 The Legislature finds that:

2 (1) The Second Amendment to the Constitution of the United States provides: "A well-  
3 regulated Militia, being necessary to the security of a free state, the right of the people to keep  
4 and bear arms, shall not be infringed."

5 (2) Section twenty-two, Article III of the Constitution of the State of West Virginia provides:  
6 "A person has the right to keep and bear arms for the defense of self, family, home and state, and  
7 for lawful hunting and recreational use."

8 (3) All federal and local statutes, ordinances, laws, orders, rules, or any other actions  
9 which attempt to restrict, tax, or regulate the possession, use, discharge in lawful self-defense,  
10 transportation, purchase, acquisition, sale, transfer, ownership, carrying, manufacture, or repair  
11 of firearms, firearms accessories and ammunition violate the Second Amendment to the  
12 Constitution of the United States and Section twenty-two, Article III of the Constitution of the State  
13 of West Virginia.

**§5-30-3. Prohibitions on federal and local infringements on the right to keep and bear**  
**arms, firearm accessories and ammunition; felony; penalty; Attorney General to**  
**defend.**

1       (a) All current and future federal, state, and local statutes, ordinances, laws, orders, rules,  
2 and any other actions which attempt to restrict, tax, or regulate the possession, use, discharge in  
3 lawful self-defense, transportation, purchase, acquisition, sale, transfer, ownership, carrying,  
4 manufacture, or repair of firearms, firearm accessories, ammunition and their accouterments  
5 contradict the true meaning and original intent of the Second Amendment to the Constitution of  
6 the United States and Section twenty-two, Article III of the Constitution of the State of West  
7 Virginia. Those statutes, ordinances, laws, orders and rules which violate the Constitution of the  
8 United States and the Constitution of the State of West Virginia are invalid, and therefore, are null  
9 and void.

10       (b) All current and future federal, state, and local statutes, ordinances, laws, orders, rules,  
11 and any other actions which attempt to restrict, tax, or regulate the possession, use, discharge in  
12 lawful self-defense, transportation, purchase, acquisition, sale, transfer, ownership, carrying,  
13 manufacture, or repair of firearms, firearm accessories, ammunition and their accouterments shall  
14 not be recognized by this state and shall not be given any recognition within the state as they are  
15 against public policy. Those federal, state, and local statutes, ordinances, laws, orders and rules  
16 are null and void and of no effect within this state.

17       (c) It is the duty of the State of West Virginia to adopt and enact any and all measures as  
18 may be necessary to prevent the enforcement of any future federal and local statutes, ordinances,  
19 laws, orders, rules, and any other actions in violation of the Second Amendment to the  
20 Constitution of the United States and Section twenty-two, Article III of the Constitution of the State  
21 of West Virginia and this section.

22       (d) Any attempt to enforce any future federal, state, or local statute, ordinance, law, order,  
23 rule, and any other action which attempts to restrict, tax, or regulate possession, use, discharge  
24 in lawful self-defense, transportation, purchase, acquisition, sale, transfer, ownership, carrying,  
25 manufacture, or repair of firearms, firearm accessories, ammunition or their accouterments within  
26 the State of West Virginia by any official, officer or employee of the United States government,  
27 the government of the State of West Virginia, any county government, local government, or

government of any municipality or any political subdivision is guilty of a felony and, upon conviction, shall be confined in a correctional facility not more than two years and fined not more than \$10,000.

(e) The Attorney General shall defend a citizen of West Virginia who is prosecuted by the United States Government for violation of a federal law relating to the possession, use, discharge in lawful self-defense, transportation, purchase, acquisition, sale, transfer, ownership, carrying, manufacture, or repair of a firearm, a firearm accessory or ammunition.

**§5-30-4. Prohibitions on infringements of the right to keep and bear arms by executive departments and state agencies; felony; penalty.**

(a) All future laws, orders, rules, policies and any other actions which attempt to restrict, tax, or regulate the possession, use, discharge in lawful self-defense, transportation, purchase, acquisition, sale, transfer, ownership, carrying, manufacture, or repair of firearms, firearm accessories, ammunition and their accouterments promulgated by any executive department of the State of West Virginia without explicit statutory authority shall not be recognized by this state and shall not be given any recognition within the state as they are against public policy. Those future laws, orders, rules, policies and any other actions are null and void and of no effect within the state.

(b) Any attempt to enforce any future laws, orders, rules, policies and any other actions described in subsection (a) of this section by any official, officer or employee of the United States government, the West Virginia government, any county government or local government is guilty of a felony and, upon conviction, shall be confined in a correctional facility for not more than two years and be assessed a fine of not more than \$10,000.

**§5-30-5. Exemptions; retroactivity; ex post facto.**

(a) Notwithstanding the provisions of this article, local governments may enact zoning ordinances to regulate the manufacture of arms and ammunition, pursuant to chapter eight-a of this code: *Provided*, That the regulation does not restrict or hamper the manufacture more than

4 any other comparable industry within the jurisdiction of the local government.

5 (b) Notwithstanding the provisions of this article prohibiting the taxation of firearms, firearm  
6 accessories, ammunition, or their accouterments, it shall not be unlawful for local governments to  
7 tax such goods, provided that such tax is comparable and common to other goods or commodities  
8 available in the jurisdiction and that the power to impose such a tax is expressly granted by state  
9 law.

10 (c) Notwithstanding the provisions of this article, local governments may enact ordinances,  
11 rules and regulations governing the use and or possession of arms by individuals directly  
12 employed as government officials while such individual is acting within the course and scope of  
13 their official duties.

14 (d) This article is effective retroactively to January 1, 2017. This article may not be  
15 construed so as to create any ex post facto law.

NOTE: The purpose of this bill is to make all future federal, state and local statutes, ordinances, laws, orders and rules concerning firearms, firearm accessories, ammunition and their accouterments invalid and unenforceable. The bill makes it a felony to attempt to enforce a federal or local statute, ordinance, law, order or rule concerning firearms, firearm accessories, ammunition and their accouterments that violate the state and federal Constitutions. The bill makes legislative findings. The bill provides criminal penalties. The bill requires the Attorney General to defend citizens of West Virginia who are prosecuted by the United States Government for violation of a federal law relating to the manufacture, sale, transfer or possession of a firearm, a firearm accessory or ammunition. The bill provides for retroactivity. The bill provides that *ex post facto* laws are not created.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.