

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 771

FISCAL
NOTE

BY SENATOR MAYNARD

[Introduced February 13, 2020; 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 §15-15-1, §15-15-2, §15-15-3, §15-15-4, §15-15-5, and §15-15-6, all relating
 3 to preserving and protecting the right to keep and bear arms; defining acts which constitute
 4 infringements upon the right to keep and bear arms; articulating the constitutional limits
 5 on these infringements and making findings in defense of the right; declaring all
 6 infringements under federal law or authority to be against the rights of the people and to
 7 be legally void; declaring the duty of courts and law-enforcement agencies to protect the
 8 rights of law-abiding citizens, including the right to keep and bear arms; providing causes
 9 of action against persons who knowingly infringe upon these rights; providing for awards
 10 of specified damages, costs, and attorney’s fees; and barring the employment of certain
 11 persons by the state or its political subdivisions for infringing actions taken under color of
 12 federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. PRESERVATION OF THE RIGHT TO KEEP AND BEAR ARMS.

§15-15-1. Legislative purpose and authority.

1 The Legislature finds and declares that:
 2 (1) The West Virginia Legislature is firmly resolved to support and defend the United States
 3 Constitution against every aggression, whether foreign or domestic, and is duty bound to oppose
 4 every infraction of those principles that constitute the basis of the union of the states because
 5 only a faithful observance of those principles can secure the nation’s existence and the public
 6 happiness;
 7 (2) Acting through the United States Constitution, the people of the several states created
 8 the federal government to be their agent in the exercise of a few defined powers, while reserving
 9 to the state governments the power to legislate on matters that concern the lives, liberties, and
 10 properties of citizens in the ordinary course of affairs;
 11 (3) The limitation of the federal government’s power is affirmed under the Tenth

12 Amendment to the United States Constitution, which defines the total scope of federal power as
13 being that which has been delegated by the people of the several states to the federal
14 government, and all power not delegated to the federal government in the United States
15 Constitution is reserved to the states respectively, or to the people themselves;

16 (4) Whenever the federal government assumes powers that the people did not grant it in
17 the United States Constitution, its acts are unauthoritative, void, and of no force;

18 (5) The several states of the United States of America respect the proper role of the federal
19 government, but reject the proposition that such respect requires unlimited submission. If the
20 government, created by a compact among the states, was the exclusive or final judge of the extent
21 of the powers granted to it by the states through the United States Constitution, the federal
22 government's discretion, and not the United States Constitution, would necessarily become the
23 measure of those powers. To the contrary, as in all other cases of compacts among powers having
24 no common judge, each party has an equal right to judge for itself as to whether infractions of the
25 compact have occurred, as well as to determine the mode and measure of redress. Although the
26 several states have granted supremacy to laws and treaties made under the powers granted in
27 the United States Constitution, such supremacy does not extend to various federal statutes,
28 executive orders, administrative orders, court orders, rules, regulations, or other actions which
29 restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or
30 ammunition exclusively within the borders of West Virginia. All such statutes, executive orders,
31 administrative orders, court orders, rules, regulations, and other actions exceed the powers
32 granted to the federal government except to the extent they are necessary and proper for
33 governing and regulating land and naval forces of the United States or for organizing, arming, and
34 disciplining of militia forces actively employed in the service of the armed forces of the United
35 States;

36 (6) The people of the several states have given Congress the power "to regulate
37 commerce with foreign nations, and among the several states", but "regulating commerce" does

38 not include the power to limit citizens' right to keep and bear arms in defense of their families,
39 neighbors, persons, or property, or to dictate as to what sort of arms and accessories law-abiding
40 West Virginians may buy, sell, exchange, or otherwise possess within the borders of this state;

41 (7) The people of the several states have also granted Congress the power "to lay and
42 collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense
43 and general welfare of United States" and "to make all laws which shall be necessary and proper
44 for carrying into execution the powers vested by the United States Constitution in the government
45 of the United States, or in any department or office thereof." These constitutional provisions
46 merely identify the means by which the federal government may execute its limited powers and
47 shall not to be so construed to grant unlimited power because to do so would be to destroy the
48 carefully constructed equilibrium between the federal and state governments. Consequently, the
49 Legislature rejects any claim that the taxing and spending powers of Congress can be used to
50 diminish in any way the right of the people to keep and bear arms;

51 (8) The people of West Virginia have vested the Legislature with the authority to regulate
52 the manufacture, possession, exchange, and use of firearms within the borders of this state,
53 subject only to the limits imposed by the Second Amendment to the Constitution of the United
54 States and by Article III, Section 22 of the West Virginia Constitution; and

55 (9) The West Virginia Legislature strongly promotes responsible gun ownership, including
56 parental supervision of minors in the proper use, storage, and ownership of all firearms, the
57 prompt reporting of stolen firearms, and the proper enforcement of all state gun laws. The West
58 Virginia Legislature hereby condemns any unlawful transfer of firearms and the use of any firearm
59 in any criminal or unlawful activity.

§15-15-2. Definition.

1 For the purposes of this article, the term "law-abiding citizen" shall mean a person who is
2 not otherwise precluded under state law from possessing a firearm and shall not be construed to
3 include anyone who is not legally present in the United States or the State of West Virginia.

§15-15-3. Laws in derogation of constitutional protections are void.

1 (a) The following federal acts, laws, executive orders, administrative orders, court orders,
2 rules, and regulations shall be considered infringements on the people's right to keep and bear
3 arms, as guaranteed by the Second Amendment of the Constitution of the United States and
4 Article III, Section 22 of the Constitution of West Virginia, within the borders of this state including,
5 but not limited to:

6 (1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition
7 not common to all other goods and services which might reasonably be expected to create a
8 chilling effect on the purchase or ownership of those items by law-abiding citizens;

9 (2) Any registering or tracking of firearms, firearm accessories, or ammunition which might
10 reasonably be expected to create a chilling effect on the purchase or ownership of those items by
11 law-abiding citizens;

12 (3) Any registering or tracking of the owners of firearms, firearm accessories, or
13 ammunition which might reasonably be expected to create a chilling effect on the purchase or
14 ownership of those items by law-abiding citizens;

15 (4) Any act forbidding the possession, ownership, or use or transfer of a firearm, firearm
16 accessory, or ammunition by law-abiding citizens; and

17 (5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from
18 law-abiding citizens.

19 (b) All federal acts, laws, executive orders, administrative orders, court orders, rules, and
20 regulations, regardless if enacted before or after the provisions of this article, which infringe on
21 the people's right to keep and bear arms as guaranteed by the Second Amendment to the
22 Constitution of the United States and Article III, Section 22 of the Constitution of West Virginia,
23 shall be invalid in this state, shall not be recognized by this state, shall be specifically rejected by
24 this state, and shall be considered null and void and of no effect in this state.

§15-15-4. Duties of courts and law-enforcement agencies.

1 The courts and law enforcement agencies of this state have an affirmative duty to protect
 2 the rights of law-abiding citizens to keep and bear arms within the borders of this state and to
 3 protect these rights from the infringements outlined under §15-15-3 of this code.

§15-15-5. Prohibited acts, right of action, award of fees and costs, limitation of immunities.

1 (a) No person, including any public officer or employee of this state or any political
 2 subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts,
 3 laws, executive orders, administrative orders, court orders, rules, regulations, statutes, or
 4 ordinances infringing on the right to keep and bear arms outlined under §15-15-3 of this code.

5 (b) Any entity or person who acts knowingly violates the provisions of subsection (a) of
 6 this section or otherwise knowingly deprives a citizen of West Virginia of the rights or privileges
 7 ensured by the Second Amendment of the Constitution of the United States or Article III,
 8 Section 22 of the Constitution of West Virginia, while acting under the color of any state or federal
 9 law, shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding
 10 for redress. In such actions, the court may award the prevailing party, other than the State of West
 11 Virginia or any political subdivision of the state, reasonable attorney’s fees and costs. Sovereign,
 12 official, and qualified immunity shall not be allowed as affirmative defenses in any action brought
 13 pursuant to the provisions of this subsection.

§15-15-6. Prohibited acts, right of action, award of fees and costs, limitation of immunities.

1 (a) Any person while acting as an official, agent, employee, or deputy of the government
 2 of the United States, or while otherwise acting under the color of federal law while within the
 3 borders of this state, who knowingly (1) Enforces or attempts to enforce any of the infringements
 4 outlined in §15-15-3 of this code; or (2) Gives material aid and support to the efforts of others who
 5 enforce or attempt to enforce any of the infringements outlined in §15-15-3 of this code; shall be
 6 permanently ineligible to serve as a law enforcement officer or to supervise law enforcement
 7 officers for the state or any political subdivision of the state.

8 (b) Neither the state nor any political subdivision of the state shall employ as a law

9 enforcement officer or supervisor of law enforcement officers any person who found to be
10 ineligible to serve in such capacity under this section.

11 (c) Any person residing in or conducting business in a jurisdiction who believes that a law
12 enforcement officer or supervisor of law-enforcement officers of such jurisdiction has taken action
13 that would render that person ineligible under this section to serve in such capacity shall have
14 standing to pursue an action for declaratory judgment in the circuit court of the county in which
15 the action allegedly occurred, or in the circuit court of Kanawha County, with respect to the
16 employment eligibility of the law enforcement officer or the supervisor of law enforcement officers
17 under this section.

18 (d) If a court determines that a law-enforcement officer or supervisor of law-enforcement
19 officers has taken any action that would render him or her ineligible to serve in that capacity under
20 this section:

21 (1) The law-enforcement officer or supervisor of law-enforcement officers shall
22 immediately be terminated from his or her position; and

23 (2) The agency or political subdivision that employed the ineligible law-enforcement officer
24 or supervisor of law-enforcement officers shall be required to pay the court costs and attorney's
25 fees associated with the declaratory judgment action that resulted in the finding of ineligibility.

26 (e) Nothing in this section shall preclude a person's right of appeal, grievance, or
27 remediation otherwise provided under this code.

NOTE: The purpose of this bill is to define acts which constitute infringements of the right to keep and bear arms, to articulate the constitutional limits on such infringements, to declare all such infringements to be against the rights of the people and to be legally void, and to provide remedies for acts taken under the color of federal law.

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