

1 **H. B. 4472**

2  
3 (By Delegates Folk, Faircloth, Kump, Butler,  
4 Householder, Cooper and Frich)  
5

6 [Introduced February 11, 2014; referred to the  
7 Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

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9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §5-30-1, §5-30-2,  
12 §5-30-3, §5-30-4 and §5-30-5, all relating to providing that  
13 all future federal and local statutes, ordinances, laws,  
14 orders, rules, and any other actions which attempt to  
15 restrict, tax, or regulate the possession, use, discharge in  
16 lawful self-defense, transportation, purchase, acquisition,  
17 sale, transfer, ownership, carrying, manufacture, or repair of  
18 firearms, firearm accessories, ammunition and their  
19 accouterments are invalid and unenforceable; making it a  
20 felony to attempt to enforce a federal or local statute,  
21 ordinance, law, order, rule, or any other action which  
22 attempts to restrict, tax, or regulate possession, use,  
23 discharge in lawful self-defense, transportation, purchase,  
24 acquisition, sale, transfer, ownership, carrying, manufacture,  
25 or repair of firearms, firearm accessories, ammunition or

1 their accouterments; prohibiting such laws, orders, rules,  
 2 policies and other actions by executive departments and state  
 3 agencies, and providing a felony for violation; providing  
 4 definitions; making findings; providing penalties; requiring  
 5 the Attorney General to defend citizens of West Virginia who  
 6 are prosecuted by the United States government for violation  
 7 of a federal law relating to the possession, use, discharge in  
 8 lawful self-defense, transportation, purchase, acquisition,  
 9 sale, transfer, ownership, carrying, manufacture, or repair of  
 10 a firearm, a firearm accessory or ammunition; providing  
 11 exemptions; providing for retroactivity; and providing that ex  
 12 post facto laws are not created.

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

14 That the Code of West Virginia, 1931, as amended, be amended  
 15 by adding thereto a new article, designated §5-30-1, §5-30-2,  
 16 §5-30-3, §5-30-4 and §5-30-5, all to read as follows:

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

18 **§5-30-1. Definitions**

19 (a) For purposes of this article:

20 (1) "Local" is a word that refers to any county in this state  
 21 as defined in section one, article one, chapter one of this code,  
 22 any municipality, city, town or village as defined in section two  
 23 of that article or any consolidated local government, county  
 24 consolidation and consolidated county as defined in section three,

1 article one, chapter seven-a of this code.

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

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

10 **§5-30-2. Legislative findings.**

11 The Legislature finds that:

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

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

20 (3) All federal and local statutes, ordinances, laws, orders,  
21 rules, or any other actions which attempt to restrict, tax, or  
22 regulate the possession, use, discharge in lawful self-defense,  
23 transportation, purchase, acquisition, sale, transfer, ownership,  
24 carrying, manufacture, or repair of firearms, firearms accessories

1 and ammunition violate the Second Amendment to the Constitution of  
2 the United States and section twenty-two, article III of the  
3 Constitution of the State of West Virginia.

4 **§5-30-3. Prohibitions on federal and local infringements on the**  
5 **right to keep and bear arms, firearm accessories and**  
6 **ammunition; felony; penalty; Attorney General to**  
7 **defend.**

8 (a) All future federal and local statutes, ordinances, laws,  
9 orders, rules, and any other actions which attempt to restrict,  
10 tax, or regulate the possession, use, discharge in lawful  
11 self-defense, transportation, purchase, acquisition, sale,  
12 transfer, ownership, carrying, manufacture, or repair of firearms,  
13 firearm accessories, ammunition and their accouterments contradict  
14 the true meaning and original intent of the Second Amendment to the  
15 Constitution of the United States and section twenty-two, article  
16 III of the Constitution of the State of West Virginia. Those  
17 statutes, ordinances, laws, orders and rules which violate the  
18 Constitution of the United States and the Constitution of the State  
19 of West Virginia and are invalid.

20 (b) All future federal and local statutes, ordinances, laws,  
21 orders, rules, and any other actions which attempt to restrict,  
22 tax, or regulate the possession, use, discharge in lawful  
23 self-defense, transportation, purchase, acquisition, sale,

1 transfer, ownership, carrying, manufacture, or repair of firearms,  
2 firearm accessories, ammunition and their accouterments shall not  
3 be recognized by this state and shall not be given any recognition  
4 within the state as they are against public policy. Those federal  
5 and local statutes, ordinances, laws, orders and rules are null  
6 and void and of no effect within this state.

7 (c) It is the duty of the State of West Virginia to adopt and  
8 enact any and all measures as may be necessary to prevent the  
9 enforcement of any future federal and local statutes, ordinances,  
10 laws, orders, rules, and any other actions in violation of the  
11 Second Amendment to the Constitution of the United States and  
12 section twenty-two, article III of the Constitution of the State of  
13 West Virginia and this section.

14 (d) Any attempt to enforce any future federal or local  
15 statute, ordinance, law, order, rule, and any other action which  
16 attempts to restrict, tax, or regulate possession, use, discharge  
17 in lawful self-defense, transportation, purchase, acquisition,  
18 sale, transfer, ownership, carrying, manufacture, or repair of  
19 firearms, firearm accessories, ammunition or their accouterments  
20 within the State of West Virginia by any official, officer or  
21 employee of the United States government, the government of the  
22 State of West Virginia, any county government, local government, or  
23 government of any municipality or any political subdivision is  
24 guilty of a felony and, upon conviction, shall be confined in a

1 correctional facility not more than two years and a fine of not  
2 more than \$10,000.

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

9 **§5-30-4. Prohibitions on infringements of the right to keep and**  
10 **bear arms by executive departments and state agencies;**  
11 **felony; penalty.**

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

23 (b) Any attempt to enforce any future, laws, orders, rules,  
24 policies and any other actions described in subsection (a) of this

1 section by any official, officer or employee of the United States  
2 government, the West Virginia government, any county government or  
3 local government is guilty of a felony and, upon conviction, shall  
4 be confined in a correctional facility for not more than two years  
5 and be assessed a fine of not more than \$10,000.

6 **§5-30-5. Exemptions; retroactivity; ex post facto.**

7 (a) Notwithstanding the provisions of this article, local  
8 governments may enact zoning ordinances to regulate the manufacture  
9 of arms and ammunition, pursuant to chapter eight-a of this code:  
10 Provided, That the regulation does not restrict or hamper said  
11 manufacture more than any other comparable industry within the  
12 jurisdiction of the local government.

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

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

24 (d) This article is effective retroactively to January 1,

1 2014. This article may not be construed so as to create any ex post  
2 facto law.

NOTE: The purpose of this bill is to make all future federal 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.

This article is new; therefore, it has been completely underscored.