

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 1071

By Senators Rose and Z. Maynard

[Introduced February 23, 2026; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §61-7-9 of the Code of West Virginia, 1931, as amended, by adding
2 a new article, designated §15-6A-1, §15-6A-2, §15-6A-3, §15-6A-4, §15-6A-5, §15-6A-6,
3 §15-6A-7, §15-6A-8, §15-6A-9, §15-6A-10, §15-6A-11, and §15-6A-12, relating to
4 Creating the Public Defense and Provisioning Act; and establishing a state office of public
5 defense for the procurement and sale of machine guns to qualified members of the public.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 6A. PUBLIC DEFENSE AND PROVISIONING ACT.

§15-6A-1. Legislative Findings.

1 (a) The Legislature of the State of West Virginia hereby finds and declares that:

2 (1) The Second Amendment to the United States Constitution declares that "[a] well
3 regulated Militia, being necessary to the security of a free State, the right of the people to keep and
4 bear Arms, shall not be infringed."

5 (2) In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court
6 explained that the Second Amendment's prefatory Militia Clause "announces" the Amendment's
7 "purpose" and serves a "clarifying function" as to the Amendment's protections. *Id.* at 577, 578.
8 To that end, the Second Amendment guarantees the people's unrestricted access to arms to (1)
9 "repel[] invasions and suppress[] insurrections," (2) "render[] large standing armies unnecessary,"
10 and (3) "resist tyranny." *Id.* at 597-98.

11 (2) Next, the Supreme Court explained that "the people" protected by the Second
12 Amendment "unambiguously refers to all members of the political community, not an unspecified
13 subset," and presumptively extends to "all Americans." *Heller*, 554 U.S. at 580, 581.

14 (3) The Supreme Court has further explained that the original meaning of the term "Arms"
15 used in the Second Amendment includes "[w]eapons of offence, or armour of defence," "any
16 thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike

17 another" and, at a minimum, includes "all firearms." *Heller*, 554 U.S. at 581. Thus, the Supreme
18 Court explained, "the Second Amendment extends, prima facie, to all instruments that constitute
19 bearable arms, even those that were not in existence at the time of the founding." *Id.* at 582.

20 (4) The Framers understood the Second Amendment to guarantee armament parity
21 between the American citizen and government infantryman. In 1788, Tench Coxe explained that
22 "Congress have no power to disarm the militia. Their swords, and every other terrible implement
23 of the soldier, are the birth-right of an American." Tench Coxe, *A Pennsylvanian*, No. 3, Pa.
24 Gazette, Feb. 20, 1788, at 2. Likewise, Henry Campbell Black later explained that "[t]he 'arms'
25 here meant are those of a soldier. ... The citizen has at all times the right to keep arms of modern
26 warfare." Henry Campbell Black, *Handbook of American Constitutional Law* § 203 (2d ed. 1897).

27 (5) In addition to the Second Amendment of the U.S. Constitution, Article III, Section 22 of
28 the West Virginia Constitution declares that "[a] person has the right to keep and bear arms for the
29 defense of self, family, home and state, and for lawful hunting and recreational use."

30 (6) This State constitutional "provision is far more explicit than its federal counterpart." *W.*
31 *Va. Citizens Def. League v. City of Charleston*, U.S. Dist. LEXIS 134527, at *35 (S.D. W. Va. Sept.
32 20, 2012), and its language "grant[s] a rather broad, unrestrictive right to bear arms for the defense
33 of self and the state." *State ex rel. City of Princeton v. Buckner*, 180 W. Va. 457, 464 (1988).

34 (7) Together, the Second Amendment and Article III, Section 22 guarantee the right of the
35 people to keep and bear the "arms of modern warfare" for the defense of themselves and the
36 State. These "arms" include, but are not limited to, the sorts of portable, bearable machineguns
37 that currently are in common use by law enforcement in this State and military units nationwide.

38 (8) The National Firearms Act of 1934 and the Gun Control Act of 1968, as amended,
39 permit State governments to transfer machineguns to law-abiding citizens. Specifically, federal
40 law permits "a transfer to or by, or possession by or under the authority of, the United States or any
41 department or agency thereof or a State, or a department, agency, or political subdivision thereof."
42 18 U.S.C. § 922(o)(2)(A) (emphases added).

43 (9) Likewise, the Gun Control Act provides that its restrictions "shall not apply with respect
 44 to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition
 45 imported for, sold or shipped to, or issued for the use of, the United States or any department or
 46 agency thereof or any State or any department, agency, or political subdivision thereof." 18 U.S.C.
 47 § 925(a)(1) (emphases added).

48 (10) It is in the public interest of the State of West Virginia and its people that American
 49 citizens be armed and better able to assist in the defense of the State, and to resist tyranny, using
 50 bearable firearms commonly used in modern warfare.

51 (11) A well-armed American populace already has proven useful in defending the
 52 homeland against foreign threats, such as when patrolling coastal areas during World War II. See
 53 David B. Kopel, *Trust the People: The Case Against Gun Control*, Cato Policy Analysis (July 11,
 54 1988), at 22.

55 (12) It therefore is in the public interest that the State provide a means whereby
 56 machineguns may be obtained by citizens.

57 (b) It is therefore the intent of the Legislature of the State of West Virginia to create an
 58 Office of Public Defense, which shall acquire and transfer machineguns to Qualified Persons.

§15-6A-2. Definitions.

1 As used in this Article:

2 (1) "Machinegun" means any weapon which shoots, is designed to shoot, or can be readily
 3 restored to shoot, automatically more than one shot, without manual reloading, by a single function
 4 of the trigger.

5 (2) "Person" means any individual, corporation, company, association, firm, trust,
 6 partnership, society, or joint stock company.

7 (3) "Qualified Person" means any person who is eligible to purchase and possess firearms
 8 under West Virginia and federal law.

§15-6A-3. Creation of the Office.

1 To carry out the provisions of this Act, there is hereby created and established an Office of
2 Public Defense within the West Virginia State Police.

§15-6A-4. Organization of the Office.

1 The Office of Public Defense shall be headed by a Director, who shall be, ex officio, the
2 Superintendent of the West Virginia State Police.

§15-6A-5. Powers and Duties of the Office.

1 (a) The Office of Public Defense, through its Director, shall have the following powers and
2 duties:

3 (1) Acquisition and Sale to Public of Machineguns. To acquire and transfer to Qualified
4 Persons, pursuant to 18 U.S.C. § 922(o)(2)(A), Machineguns for the defense of the State and its
5 people. Machineguns acquired and transferred by the Office under this Act shall be the same as,
6 or of like kind to, those machineguns currently in use by law enforcement or the United States
7 Armed Forces, and shall include but not be limited to AR-15/M16-platform, M249-type, and MP5-
8 type Machineguns. The Director may, in his discretion, acquire pursuant to this Act additional
9 types of Machineguns beyond those identified in this section, which are in common use by the
10 military or law enforcement, and which the Director finds are useful to protecting the security of a
11 free State. In acquiring Machineguns pursuant to this Act, the Office shall, to the extent
12 practicable, prioritize purchases of machineguns from manufacturers and dealers located within
13 West Virginia.

14 (2) Operation of Distribution Stations. To establish, maintain, and operate warehouses
15 and distribution stations, using to the extent possible existing State Police personnel,
16 infrastructure, and barracks, and in the operation thereof to purchase, to transport, store, sell, and
17 transfer Machineguns to Qualified Persons. Machineguns shall be made available for sale and
18 transfer at each State Police Troop Headquarters located throughout the State.

19 (3) Verification of Eligibility. To verify the eligibility of Qualified Persons to purchase
20 Machineguns through the same background-check process described in Section 61-7-4(c).

21 (4) Making Reports. To report to the Governor annually, and at such other times as he may
22 require, concerning the condition, management, and financial transactions of the Office.

23 (5) General Powers. To do all things necessary and incidental to its powers and duties
24 under this Act.

§15-6A-6. Powers and Duties of the Director.

1 The Director of the Office of Public Defense shall have the following powers and duties:

2 (1) Supervision: To exercise general supervision of the conduct and business of the Office.

3 (2) Rules and Regulations: To promulgate such rules and regulations as are necessary to
4 direct and control the exercise of the governmental and proprietary powers and duties of the
5 Office.

6 (3) Expenditure of Funds: To expend funds from the Public Defense Fund to offset
7 operational costs incurred administering this Act.

§15-6A-7. Authority of Transferees.

1 The Legislature of the State of West Virginia hereby declares that:

2 (1) All transfers of Machineguns to Qualified Persons under this Act shall be deemed to
3 have been made "by" the State of West Virginia, and such transfers are made "under the authority
4 of" the State of West Virginia, for purposes of 18 U.S.C. § 922(o)(2)(A).

5 (2) Any transferee of a Machinegun under the provisions of this Act shall be deemed to
6 possess a Machinegun that was transferred "by" the State, and which was transferred "under the
7 authority of" the State of West Virginia, for purposes of 18 U.S.C. § 922(o)(2)(A).

§15-6A-8. State, Officers, and Employees Not Liable.

1 Neither the State of West Virginia, the Office of Public Defense, the Director, nor any of the
2 officers or employees of the Office shall be liable for damages sustained by any person because of
3 any act or omission done in the performance of their respective duties under this Act. Neither the
4 State of West Virginia, the Office of Public Defense, the Director, nor any of the officers or
5 employees of the Office shall have any criminal or civil liability for any criminal, unlawful, negligent,

6 or accidental acts or omissions committed by transferees or others related to any Machinegun
7 acquired and transferred pursuant to this Act.

§15-6A-9. Surcharge Added to Price of Machineguns Sold—Collection and Remission by Director.

1 The Director shall add a \$250 surcharge to the total price of each Machinegun sold and
2 transferred under this Act, which shall be paid into the Public Defense Fund. The Director is also
3 authorized to add to the price of Machineguns offered for sale to Qualified Persons an additional
4 surcharge, to be paid into the Public Defense Fund, in such amount as the Director shall determine
5 is necessary to equal and offset the cost of administration of the program created by this Act, but in
6 no case shall that amount be more than \$50.

§15-6A-10. Revenue Generated Under the Act.

1 There is hereby created in the State Treasury a special revenue account, which shall be an
2 interest bearing account, to be known as the Public Defense Fund. The revenue generated under
3 this Act shall be paid into the Public Defense Fund, including any appropriations that may be made
4 by the Legislature, income from the investment of monies held in the account, and all other sums
5 available for deposit to the Public Defense Fund from any source, public or private. The Director is
6 authorized to expend funds from the Public Defense Fund to offset operational costs incurred
7 administering this Act. Any balance remaining in the Public Defense Fund at the end of any State
8 fiscal year shall revert to the General Revenue Fund.

§15-6A-11. Record Retention, Destruction, and Restrictive Use of Information.

1 The following provisions shall apply to records created under this Act:
2 (1) Upon transfer of a Machinegun to a Qualified Person under this Act, the Director or his
3 designee shall prepare two original copies of a signed and dated certificate, bearing the Seal of the
4 State of West Virginia, and identifying the Qualified Person to whom the Machinegun was
5 transferred, as well as identifying the Machinegun’s make, model, and serial number. The Office
6 of Public Defense shall issue one copy to the Qualified Person, and the Office shall retain the

7 second copy in perpetuity. Such certificate shall constitute proof of compliance with this Act.

8 (2) No information contained within any application, registration, or records submitted or
9 created in compliance with this Act shall be used for any purpose other than to determine eligibility
10 for, or to record, a transfer under this Act. Such information shall be exempt from disclosure or
11 inspection under the West Virginia Freedom of Information Act.

12 (3) Aside from the original certificate of transfer kept by the Office, all other records
13 associated with the transfer of any Machinegun, which contain personally identifiable information,
14 shall be destroyed by the Office five years after the Machinegun transfer was made.

§15-6A-12. Subsequent Transfer or Return of Machineguns Transferred Under This Act.

1 The following provisions apply to subsequent transfers of Machineguns originally
2 transferred under this Act:

3 (1) Change in Eligibility. Should a person to whom a Machinegun has been transferred
4 under this Act later become prohibited from possessing firearms under West Virginia or federal
5 law, such person shall return the Machinegun to the State Police within seven days of learning of
6 his or her prohibited status. In the case of a corporation, company, association, firm, trust,
7 partnership, society, or joint stock company where only one responsible person of such entity has
8 become prohibited, but not the entity itself, such entity may continue to own and possess the
9 transferred Machinegun, provided that the prohibited person is no longer a responsible person of
10 such entity, and the entity has at least one responsible person who remains eligible to possess
11 firearms under West Virginia and federal law. Any Machinegun returned under this subsection
12 shall be made available for sale to other Qualified Persons, and shall be discounted in price by
13 such nonzero dollar amount as the Director may decide.

14 (2) Subsequent Transfer. Should a Qualified Person to whom a Machinegun has been
15 transferred under this Act subsequently wish to transfer that Machinegun to another Qualified
16 Person, such transferor shall present the Machinegun to the Office and, for a fee of \$275 payable
17 by the new transferee to the Office of Public Defense, the Office shall transfer such Machinegun to

18 the new transferee and issue a new certificate to that Person. In the case of a transfer of a
 19 Machinegun to an heir or other beneficiary of an estate following the death of the Machinegun's
 20 original owner, the representative of the estate shall follow the same procedure listed in this
 21 subsection, provided that the fee for such transfer to any heir or other beneficiary shall be \$0.

22 (3) Prohibition on Destruction. The Office of Public Defense shall not destroy any
 23 Machinegun acquired by it pursuant to this Act, except in cases where a Machinegun returned
 24 under this section is unserviceable.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-9. Possession of machine guns, penalties.

1 It shall be unlawful for any person to carry, transport, or have in his possession, any
 2 machine gun, submachine gun, or any other fully automatic weapon unless he or she has fully
 3 complied with (1) applicable federal statutes and all applicable rules and regulations of the
 4 secretary of the treasury of the United States relating to such firearms or (2) the laws of this State.

5 Any person who violates the provision of this section shall be guilty of a misdemeanor, and,
 6 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or shall be
 7 confined in the county jail for not less than ninety days, or more than one year, or both.

NOTE: The purpose of this bill is to create the Public Defense and Provisioning Act.

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