

# WEST VIRGINIA CODE: §61-7B-2

## §61-7B-2. Legislative findings and intent.

The Legislature of the State of West Virginia finds:

- (1) The right to keep and bear arms is a fundamental right and freedom enshrined in the federal and state constitutions. The Second Amendment to the Constitution of the United States provides "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed". Article III, section 22 of the Constitution of the State of West Virginia provides "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.";
- (2) Article VI, Clause two of the Constitution of the United States provides "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.";
- (3) The Constitution of the State of West Virginia provides "[t]he state of West Virginia is, and shall remain, one of the United States of America. The Constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.";
- (4) The Constitution of the State of West Virginia reserves to the state the exclusive regulation of its own internal government and police;
- (5) The Supreme Court of the United States held "Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty". *Printz v. United States*, 521 U.S. 898 (1997);
- (6) There is a genuine concern among a significant number of West Virginians that the executive branch of the federal government is poised to improperly infringe on the right to keep and bear arms using executive orders issued by the President of the United States or under acts of the Congress of the United States that violate the liberties guarded by the Second Amendment to the Constitution of United States;

(7) The legislature finds that the increased use of executive orders to effectuate policy goals in lieu of legislation considered by both houses of congress is clearly not what the founders intended and subverts the process of governance;

(8) There is also genuine concern that the reliance on executive orders to effectuate policy goals rather than legislation could cause the commandeering of state and local law-enforcement personnel and resources to attempt to enforce policies regarding firearms which would violate both the United States and West Virginia Constitutions;

(9) On April 8, 2021, in remarks delivered at the White House Rose Garden in Washington, D.C., the President of the United States announced his support of new federal initiatives, some of which, like the proposal for model “red flag” laws, are an anathema to law-abiding West Virginians, who cherish their natural rights and liberties which are guarded by both the Constitution of the United States and the West Virginia Constitution.

(10) It is the express intent of this article to defend the state from any attempt at federal commandeering of already stressed state and local law-enforcement resources for purposes that violate the constitutional rights of our citizens, while supporting the cooperation between local, state, and federal law enforcement which has proven to be a benefit to all parties; and

(11) It is the further express intent of this bill to protect the rights of the citizens of West Virginia to keep and bear arms which rights are guarded and protected by the Second Amendment to the Constitution of the United States and Article III, Section 22 of the West Virginia Constitution.

(12) It is the further intent of this article to provide for and create a means of challenging, by and through the office of the Attorney General of this state, the constitutionality of enactments by the Congress of the United States which transgress the limits of federal authority established by the Second Amendment to the Constitution of the United States.