

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2694

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GRAVES AND HOWELL

[Introduced February 23, 2021; 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 §61-7B-1, §61-7B-2, §61-7B-3, §61-7B-4, and §61-7B-5, all relating to
3 creating the “Second Amendment Preservation Act”; stating legislative findings; providing
4 prohibitions for agencies of the state, political subdivision of the state, or employees, while
5 acting in their official capacity, of an agency or political subdivision of the state; requiring
6 the Attorney General to publish model policies; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. THE SECOND AMENDMENT PRESERVATION ACT.

§61-7B-1. Short title.

1 This article shall be known and may be cited as the “Second Amendment Preservation
2 Act”.

§61-7B-2. Legislative findings.

1 The Legislature of the State of West Virginia finds:

2 (a) That the right to keep and bear arms is a fundamental individual right that may not be
3 infringed, and;

4 (b) Firearm owners are valuable and essential members of the West Virginia community.
5 With over 60% of all West Virginia citizens owning firearms, any firearm restriction adversely
6 affects all of West Virginia, and;

7 (c) A relationship of trust between West Virginia’s firearm owners and state and local
8 agencies is central to the public safety of the people of West Virginia, and;

9 (d) This trust is threatened when state and local agencies are entangled with federal law
10 enforcement, with the result that firearm owners and community members fear approaching police
11 when they are victims of and/or witnesses to crimes, seeking basic health services, or attending
12 school, to the detriment of public safety and the well-being of all West Virginians, and;

13 (e) Entangling state and local agencies with federal law enforcement programs diverts
14 already limited resources and blurs the lines of accountability between local, state, and federal
15 governments, and;

16 (f) State and local participation in federal law enforcement programs also raises
17 constitutional concerns, including the prospect that West Virginia residents could be detained in
18 violation of the Fourth Amendment and Second Amendment to the United States Constitution, or
19 targeted on the basis of political affiliation, religion, or other protected classes. Additionally,
20 entanglement between state and federal forces raises issues of conflicts of the West Virginia
21 State Constitution and;

22 (g) This bill seeks to ensure effective policing, to protect the safety, well-being, and
23 constitutional rights of the people of West Virginia, and to direct the state's limited resources to
24 matters of greatest concern to state and local governments and;

25 (h) This act shall not be construed as providing, expanding, or ratifying any legal authority
26 for any state or local law enforcement agency to participate in federal firearm law enforcement.
27 Instead, it is the legislature's goal to protect West Virginia employees, including law-enforcement
28 officers, from being directed, through federal executive orders, agency orders, statutes, laws,
29 rules, or regulations in effect on or after the effective date of this article, to violate their oath of
30 office and individual rights affirmed under the Second Amendment to the Constitution of the
31 United States and Article 3, Section 22 of the Constitution of the State of West Virginia and;

32 (i) That pursuant to and in furtherance of the principles of federalism enshrined in the
33 Constitution of the United States, and recognized by the Unites States Supreme Court, the federal
34 government may not commandeer this state's officers, agents, or employees to participate in the
35 enforcement or facilitation of any federal act or regulatory program, and;

36 (j) That this right to be free from the commandeering hand of the federal government has
37 been most notably recognized by the United States Supreme Court in *Printz v. United States*
38 when the Court held: The Federal Government may neither issue directives requiring the States

39 to address particular problems, nor command the States' officers, or those of their political
40 subdivisions, to administer or enforce a federal regulatory program.

§61-7B-3. Prohibitions.

1 Other than compliance with an order of a court of this state, notwithstanding any law,
2 regulation, rule, or order to the contrary, no agency of this state, political subdivision of this state,
3 or employee of an agency or political subdivision of this state acting in his or her official capacity
4 may:

5 (a) Use agency or department moneys or personnel to investigate, interrogate, detain,
6 detect, or aid a federal agency in whole or in part or arrest persons for federal law enforcement
7 purposes, including any of the following:

8 (1) Inquiring into an individual's ownership regarding a firearm, firearm accessory, or
9 ammunition, if the act, law, order, rule, or regulation for which the individual is suspected to be in
10 violation does not exist under the laws of this state nor is substantially similar to a law of this state;

11 (2) Detaining an individual on the basis of a hold request related solely to an alleged
12 federal firearm violation;

13 (3) Providing personal information about an individual, including, but not limited to, the
14 individual's home address or work address if that information is required for the purpose of
15 furthering a federal firearm investigation into a violation of federal firearm law that is not otherwise
16 unlawful in West Virginia, unless that information is available to the public;

17 (4) Making or intentionally participating in arrests based strictly on a federal firearm law
18 that differs from or is not substantially similar to a West Virginia law;

19 (5) Performing the functions of an agent or officer of the federal Bureau of Alcohol,
20 Tobacco, Firearms and Explosives, whether pursuant to any other law, regulation, or policy,
21 whether formal or informal, if such function is to knowingly and willingly participate in any way in
22 the enforcement of any federal act, law, order, rule, or regulation regarding a firearm accessory

23 or ammunition if the act, law, order, rule or regulation does not exist in the laws of the State of
24 West Virginia or is not substantially similar to a law of West Virginia;

25 (6) Placing law enforcement officers under the supervision of federal agencies or employ
26 law enforcement officers deputized as special federal officers or special federal deputies for
27 purposes of federal firearm law enforcement unless the act, law, order, rule, or regulation for
28 which such enforcement is sought is the same as or substantially similar to a law of West Virginia.
29 All law enforcement officers remain subject to West Virginia law governing conduct of law
30 enforcement officers and the policies of the employing agency;

31 (7) Providing office space exclusively dedicated for federal authorities for use within a
32 municipal or county law enforcement facility for the purpose of federal firearms regulation
33 enforcement; or

34 (8) Utilizing any assets, state funds, or funds allocated by the state to local entities on or
35 after the effective date of this article, in whole or in part, to engage in any activity that aids a
36 federal agency, federal agent, or corporation providing services to the federal government in the
37 enforcement or any investigation pursuant to the enforcement of any federal act, law, order, rule,
38 or regulation regarding a firearm, firearm accessory, or ammunition if the act, law, order, rule, or
39 regulation does not exist under the laws of this state or is not substantially similar to a law of this
40 state.

41 (b) Notwithstanding the limitations in subsection (a), this section does not prevent any
42 West Virginia law enforcement agency from doing any of the following that does not violate any
43 policy of the law enforcement agency or any local law or policy of the jurisdiction in which the
44 agency is operating;

45 (1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a
46 violation of state law that is detected during an unrelated law enforcement activity.

47 (2) Responding to a request from federal law enforcement authorities for information about
48 a specific person’s criminal history, including previous criminal arrests, convictions, or similar
49 criminal history information, or where otherwise permitted by state law.

50 (3) Conducting enforcement or investigative duties associated with a joint law enforcement
51 task force, including the sharing of confidential information with other law enforcement agencies
52 for purposes of task force investigations, so long as the following conditions are met:

53 (A) The primary purpose of the joint law enforcement task force is not federal firearm law
54 enforcement; and

55 (B) The enforcement or investigative duties are primarily related to a violation of state or
56 federal law unrelated to federal firearm law enforcement.

57 **§61-7B-4. Attorney General to publish model policies.**

58 The Attorney General, by January 1, 2022, and as often thereafter as the Attorney General
59 deems necessary, shall publish model policies for agencies of this state, political subdivisions of
60 this state, and employees of agencies or political subdivisions of this state to provide guidance on
61 limiting assistance with federal law enforcement under this article, to the fullest extent possible
62 consistent with federal and state law.

§61-7B-5. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is
2 held invalid, the invalidity shall not affect other provisions or applications of this article, and to this
3 end the provisions of this article are declared to be severable.

NOTE: The purpose of this bill is to prevent any agency of this state, political subdivision of this state, or employee of an agency or political subdivision of this state acting in his or her official capacity from assisting federal law enforcement officers in the investigation or enforcement of alleged violations of federal firearm laws which are not also violations of the laws of this state.

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