

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 268

BY SENATORS MARTIN, PHILLIPS, KARNES, STOVER,
SMITH, RUCKER, ROMANO, JEFFRIES, HAMILTON, AND
AZINGER

[Introduced February 12, 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 §31A-8I-1, §31A-8I-2, §31A-8I-3, and §31A-8I-4, all relating to unlawful
3 discriminatory practices by a financial institution or government entity against
4 manufacturers, retailers, distributors, shooting ranges, or trade associations that support
5 or are engaged in the lawful commerce of firearms, firearms accessories, or ammunition
6 products; authorizing a declaratory judgment action to be brought by the Attorney General
7 in the name of the state; and providing for an award of monetary damages and costs and
8 other remedies against the violators including potential discontinuance of business by the
9 state with these violators.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8I. UNLAWFUL DISCRIMINATORY PRACTICES.

§31A-8I-1. Definitions.

1 As used in this article:

2 “Ammunition” means one or more loaded cartridges consisting of a primed case,
3 propellant, and with or without one or more projectiles;

4 “Financial institution” means any person doing business under the laws of any state or
5 commonwealth or the United States relating to banks, bank holding companies, savings banks,
6 payment processors, savings and loan associations, trust companies, or credit unions, and has
7 the same definition as in §31A-1-2 of this code;

8 “Firearm” means any weapon which will expel a projectile by the action of an explosive;

9 “Firearm accessory” means a device specifically designed or adapted to enable the
10 wearing or carrying about one’s person, or the storage or mounting in or on a conveyance, of a
11 firearm, or an attachment or device specifically designed or adapted to be inserted into or affixed
12 onto a firearm to enable, alter, or improve the functioning or capabilities of the firearm; and

13 “Trade association” means any person, corporation, unincorporated association,
14 federation, business league, or professional or business organization;

15 (1) Not organized or operated for profit and for which no part of its net earnings inures to
16 the benefit of any private shareholder or individual;

17 (2) That is an organization described in 26 U.S.C. sec. 502(c)(6) and exempt from tax
18 under 26 U.S.C. sec. 501(a); and

19 (3) Two or more members of which are manufacturers or sellers of firearms, firearms
20 accessories, or ammunition.

§31A-8I-2. Unlawful discriminatory practice.

1 (a) It is an unlawful discriminatory practice for a financial institution or government entity
2 to:

3 (1) Refuse to engage in the trade of any goods or services with;

4 (2) Refrain from continuing an existing business relationship with;

5 (3) Terminate an existing business relationship with; or

6 (4) Otherwise discriminate against any of the following:

7 (i) A manufacturer of firearms, firearms accessories, or ammunition;

8 (ii) A retailer of firearms, firearms accessories, or ammunition;

9 (iii) A distributor of firearms, firearms accessories, or ammunition;

10 (iv) A shooting range; or

11 (v) A trade association;

12 because the manufacturer, retailer, distributor, shooting range, or trade association
13 supports or is engaged in the lawful commerce of firearms, firearms accessories, or ammunition
14 products.

15 (b) It is not a violation of subsection (a) of this section for a financial institution to:

16 (1) Refuse to provide; (2) refrain from continuing to provide; or (3) terminate financial
17 services with a manufacturer, retailer, distributor, shooting range, or trade association identified
18 in subsection (a) of this section for any business reason or due to a directive by a regulator.

19 (b) A business reason shall not mean a policy of refusing to provide financial services or

20 otherwise discriminate in the provision of financial services to a manufacturer, retailer, distributor,
21 shooting range, or trade association identified in subsection (1) of this section.

§31A-8I-3. Civil cause of action.

1 A victim of an unlawful discriminatory practice under §31A-8I-2 of this code may bring a
2 civil cause of action against an entity for the unlawful discriminatory practice. Remedies may
3 include:

- 4 (a) Actual and compensatory damages;
- 5 (b) Treble damages;
- 6 (c) Exemplary damages;
- 7 (d) Injunctive relief; and
- 8 (e) Any other appropriate civil relief.

9 (2) A plaintiff who prevails in a civil action filed pursuant to this section is entitled to recover
10 reasonable attorney fees and all court costs.

11 (3) A civil cause of action filed pursuant to this section shall be filed no later than two years
12 after the date when the victim became aware of the unlawful discriminatory practice.

§31A-8I-4. Attorney General may file action.

1 (a) The Attorney General may file a civil cause of action in circuit court in the name of the
2 state against an entity believed to be engaging or have previously engaged in an unlawful
3 discriminatory practice under §31A-8I-2 of this code to:

- 4 (1) Obtain a declaratory judgment that the act or practice violates provisions of §31A-8I-2
5 of this code;
- 6 (2) Enjoin any act or practice that violates the provisions of this article by issuance of a
7 temporary restraining order or preliminary or permanent injunction, without bond, upon the giving
8 of appropriate notice; or

9 (3) Recover civil penalties of up to \$10,000 for each violation of §31A-8I-2 of this code .

10 (b) In any action brought by the Attorney General under this section in which the state has

11 prevailed, the court shall award, in addition to any other remedies, reasonable attorney's fees,
12 investigative costs, and litigation costs to the Attorney General.

13 (c) The Attorney General shall recommend to the Governor a discontinuation of state
14 business relations with entities found to be in violation of this article.

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NOTE: The purpose of this bill is to create and define the civil offense of unlawful discriminatory practices by a financial institution or government entity against manufacturers, retailers, distributors, shooting ranges, or trade associations that support or are engaged in the lawful commerce of firearms, firearms accessories, or ammunition products. The bill authorizes a declaratory judgment action to be brought by the Attorney General in the name of the state. It provides monetary damages and other remedies and costs, together with potential discontinuance of business by the state with these violators.

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