

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5055

By Delegates Ridenour, Foster, Gearhart, Kirby,
Marple, Martin, Burkhammer, Phillips, C. Pritt, Kump,
and Hillenbrand

[Introduced January 23, 2024; 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 §15-17-1, §15-17-2, §15-17-3, §15-17-4, §15-17-5, §15-17-6, §15-17-7, §15-
 3 17-8, and §15-17-9, all relating to the creation of the Anti-Federal Commandeering Act;
 4 providing for a short title; providing for legislative findings and intent; creating definitions;
 5 prohibiting federal commandeering; creating prohibitions on police activity; defining
 6 permitted activities; allowing the Attorney General to challenge unconstitutional federal
 7 actions; allowing the Attorney General to publish model policies; and providing law
 8 enforcement immunity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. THE ANTI-FEDERAL COMMANDEERING ACT.

§15-17-1. Short title.

1 This article shall be known and may be cited as the West Virginia Anti-Federal
 2 Commandeering Act.

§15-17-2. Legislative findings and intent.

1 The Legislature of the State of West Virginia finds:

2 (1) The Constitution of the State of West Virginia reserves to the state the exclusive
 3 regulation of its own internal government and police;

4 (2) The Supreme Court of the United States held "Congress cannot compel the States to
 5 enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent
 6 that prohibition by conscripting the States' officers directly. The Federal Government may neither
 7 issue directives requiring the States to address particular problems, nor command the States'
 8 officers, or those of their political subdivisions, to administer or enforce a federal regulatory
 9 program. It matters not whether policymaking is involved, and no case-by-case weighing of the
 10 burdens or benefits is necessary; such commands are fundamentally incompatible with our
 11 constitutional system of dual sovereignty". Printz v. United States, 521 U.S. 898 (1997);

12 (3) The federal government, thereby, cannot compel States' law enforcement entities to

13 support federal law enforcement actions;

14 (4) There is a genuine concern among a significant number of West Virginians that the
15 executive branch of the federal government is improperly infringing on the Constitutional rights of
16 Americans;

17 (5) There is also genuine concern that the federal government will commandeer state and
18 local law-enforcement personnel and resources to attempt to conduct federal law enforcement
19 actions that violate both the United States and West Virginia Constitutions;

20 (6) Federal law enforcement entities are conducting politicized investigations, persecution
21 and prosecutions of Americans exercising their Constitutional rights, particularly those guaranteed
22 by the First Amendment; federal law enforcement and intelligence entities are conducting un-
23 Constitutional surveillance on Americans; federal law enforcement entities are illegally
24 manufacturing evidence to deceive the public and potentially juries; federal law enforcement
25 entities are using illegally human sources to infiltrate groups to entrap Americans in spurious
26 charges; and federal law enforcement resources are ignoring critical threats, including terrorism,
27 child exploitation, and espionage;

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

33 (8) It is the further express intent of this article to protect the Constitutional rights of the
34 citizens of West Virginia and to provide for and create a means of challenging, by and through the
35 office of the Attorney General of this state, the constitutionality of enactments by the Congress of
36 the United States which transgress the limits of federal authority established by the Constitution of
37 the United States.

§15-17-3.

Definitions.

1 For purposes of this article, the following words and phrases have the following meaning:

2 (1) "Commandeering" means taking control of or seizing the assets, personnel, or
3 operations of an agency of this state, or of a political subdivision of this state, or the employees of
4 an agency or political subdivision of this state without the express authority for the control having
5 been formally given by the state or political subdivision of the state.

6 (2) "Federal commandeering" means commandeering by the government of the United
7 States, or any department, bureau, agency, or commission of the assets, personnel, operations, or
8 employees of an agency of this state, or of a political subdivision.

9 (3) "Politically-motivated investigation" includes, but is not limited to, any investigation of a
10 public official or candidate for elected office, unless reasonable grounds exist to suspect the
11 subject of the investigation is, or may be, involved in criminal conduct, any law-enforcement
12 activity targeting, surveilling, or monitoring protected constitutional activities of any person, or any
13 law-enforcement resources or activities used for purposes of subverting the constitutional rights of
14 any person.

§15-17-4. Federal commandeering prohibited.

1 No agency of this state, political subdivision of this state, or employee of an agency, or
2 political subdivision of this state, acting in his or her official capacity, may be commandeered by the
3 United States government under an executive order or action of the President of the United States
4 or under an act of the Congress of the United States. Federal commandeering of West Virginia
5 law-enforcement is prohibited.

§15-17-5. Prohibitions on police activity.

1 No police agency, department, or officer of this state may participate in the execution of any
2 federal law enforcement activity, including search or arrest warrants, other orders, or lend any
3 assistance to federal law enforcement entities, including traffic management, when there is any
4 indication or sense that the law enforcement activity has a political nexus as its primary motivation
5 or will support the political persecution of any person.

§15-17-6. Permitted activities.

1 Notwithstanding the limitations in sections four and five of this article, this article does not
2 prevent any West Virginia law-enforcement agency from doing any of the following that does not
3 violate any policy of the law-enforcement agency or any local law or policy of the jurisdiction in
4 which the agency is:

5 (1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for, a
6 violation of law that is detected during law-enforcement activity authorized by law;

7 (2) Responding to a request from federal law-enforcement authorities for information about
8 a specific person’s criminal history, including previous criminal arrests, convictions, address, or
9 similar criminal history information, or where otherwise permitted by state law; or

10 (3) Conducting enforcement or investigative activities or duties associated with a joint law-
11 enforcement task force, including the sharing of confidential information with other law-
12 enforcement agencies for purposes of task force investigations, as long as the following conditions
13 are met:

14 (A) The primary purpose of the joint law-enforcement task force is something other than
15 politically-motivated investigations, prosecutions or persecution of any person; or

16 (B) The enforcement or investigative duties are primarily related to a violation of state or
17 federal law unrelated to politically-motivated investigations, prosecutions or persecution of any
18 person.

19 (4) State and local law enforcement are encouraged to monitor any federal law
20 enforcement activity to ensure that the rights of West Virginia citizens are protected, and to lend
21 assistance to West Virginians in the event of violation of their Constitutional rights, including the
22 use of excessive force by federal law enforcement entities.

§15-17-7. Attorney General authorized and directed to challenge unconstitutional federal actions.

1 Whenever any federal statute, presidential executive order, agency order, federal law, rule,

2 or regulation is determined by the Attorney General of this state to infringe upon the rights of West
 3 Virginians to the Constitution of the United States, the Attorney General shall commence and
 4 prosecute legal challenges to the federal action. In exercising and discharging the duties required
 5 by this section, the Attorney General shall pursue all available appeals in the courts of the United
 6 States, and he or she may expend the public moneys necessary for these purposes. The Attorney
 7 General may solicit the participation in these efforts of attorneys general of the other states of the
 8 United States and join actions brought by attorneys general of other states or other persons
 9 seeking to protect such rights.

§15-17-8. Attorney General to publish model policies.

1 On or before January 1, 2025, and as often thereafter as he or she shall consider
 2 necessary, the Attorney General shall publish policies for police departments and agencies of this
 3 state, and for the police departments and agencies of the political subdivisions of this state,
 4 providing guidance on resistance to federal commandeering and lawful measures which can be
 5 taken by the law-enforcement agencies and departments of this state and its political subdivisions
 6 to protect the citizens of this state from the consequences of any attempts or efforts at federal
 7 commandeering.

§15-17-9. Law-enforcement immunity.

1 (a) No head of a law-enforcement agency or law-enforcement officer under his or her
 2 command may be required, at the direction of an agency of the federal government, to act in a law-
 3 enforcement capacity to enforce a federal statute, executive order, agency order, rule or regulation
 4 determined by the Attorney General to infringe upon rights granted by the Constitution of the
 5 United States.

6 (b) No head of a law-enforcement agency or law-enforcement officer may be held liable
 7 civilly or criminally, nor shall his or her employment be terminated, nor shall he or she be
 8 decertified as a law-enforcement officer, for refusing to enforce a federal statute, executive order,
 9 agency order, rule, or regulation determined by the Attorney General of West Virginia to infringe

10 upon the rights of West Virginians under the Constitution of the United States while the
11 constitutionality of the statute, executive order, agency order, rule, or regulation is being
12 challenged judicially pursuant to §61-7B-8 of this code, nor thereafter if the challenge is
13 successful.

14 (c) Any head of a law-enforcement agency or law-enforcement officer under his or her
15 command who is charged criminally or civilly, or who has had his or her employment terminated, or
16 who has had his or her certification as a law enforcement officer suspended or revoked, for failing
17 or refusing to enforce a federal statute executive order, agency order, rule, or regulation
18 referenced in subsection (a) of this section is entitled to reimbursement of reasonable attorney's
19 fees related to his or her defense.

NOTE: The purpose of this bill is to create the Anti-Federal Commandeering Act. The bill provides for a short title. The bill provides for legislative findings and intent. The bill provides for definitions. The bill prohibits federal commandeering. The bill creates prohibitions on police activity. The bill defines permitted activities. The bill allows the Attorney General to challenge unconstitutional federal actions. The bill allows the Attorney General to publish model policies. Finally, the bill provides for law enforcement immunity.

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