

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2694

BY DELEGATES STEELE, FOSTER, SUMMERS, J. PACK,

PHILLIPS, D. JEFFRIES, CLARK, SYPOLT, MAYNARD,

GRAVES AND HOWELL

[Passed April 10, 2021; in effect ninety days from passage.]

1 AN ACT 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, §61-7B-5, §61-7B-6, §61-7B-7,
3 §61-7B-8, §61-7B-9, and §61-7B-10 all relating to creating the “West Virginia Second
4 Amendment Preservation Act and Anti-Federal Commandeering Act”; providing a short
5 title; stating legislative findings and intent; defining terms; prohibiting Federal
6 commandeering of any agency of the state or political subdivisions of the state, including
7 West Virginia law-enforcement for purposes of enforcement of federal firearms laws or
8 presidential executive orders; establishing prohibitions on police activities; establishing
9 prohibitions on court action; identifying permitted law-enforcement activities; authorizing
10 the Attorney General to challenge unconstitutional federal actions relating to firearms;
11 requiring the Attorney General to publish model policies; and establishing immunity for
12 law-enforcement.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7B. THE WEST VIRGINIA SECOND AMENDMENT PRESERVATION AND
ANTI-FEDERAL COMMANDEERING ACT.**

§61-7B-1. Short title.

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

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

1 The Legislature of the State of West Virginia finds:

2 (1) The right to keep and bear arms is a fundamental right and freedom enshrined in the
3 federal and state constitutions. The Second Amendment to the Constitution of the United States
4 provides “A well regulated Militia, being necessary to the security of a free State, the right of the
5 people to keep and bear Arms shall not be infringed”. Article III, section 22 of the Constitution of

6 the State of West Virginia provides “A person has the right to keep and bear arms for the defense
7 of self, family, home and state, and for lawful hunting and recreational use.”;

8 (2) Article VI, Clause two of the Constitution of the United States provides “This
9 Constitution, and the laws of the United States which shall be made in pursuance thereof; and all
10 treaties made, or which shall be made, under the authority of the United States, shall be the
11 supreme law of the land; and the judges in every state shall be bound thereby, anything in the
12 Constitution or laws of any State to the contrary notwithstanding.”;

13 (3) The Constitution of the State of West Virginia provides “[t]he state of West Virginia is,
14 and shall remain, one of the United States of America. The Constitution of the United States of
15 America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the
16 land.”;

17 (4) The Constitution of the State of West Virginia reserves to the state the exclusive
18 regulation of its own internal government and police;

19 (5) The Supreme Court of the United States held “Congress cannot compel the States to
20 enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent
21 that prohibition by conscripting the States’ officers directly. The Federal Government may neither
22 issue directives requiring the States to address particular problems, nor command the States’
23 officers, or those of their political subdivisions, to administer or enforce a federal regulatory
24 program. It matters not whether policymaking is involved, and no case-by-case weighing of the
25 burdens or benefits is necessary; such commands are fundamentally incompatible with our
26 constitutional system of dual sovereignty”. *Printz v. United States*, 521 U.S. 898 (1997);

27 (6) There is a genuine concern among a significant number of West Virginians that the
28 executive branch of the federal government is poised to improperly infringe on the right to keep
29 and bear arms using executive orders issued by the President of the United States or under acts
30 of the Congress of the United States that violate the liberties guarded by the Second Amendment
31 to the Constitution of United States;

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

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

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

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

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

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

§61-7B-3. Definitions.

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

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

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

9 “Inconsistent federal firearms law, regulation, or rule” means a federal statute, regulation,
10 or rule relating to firearms, firearms accessories, or ammunition that is inconsistent with the laws
11 of the State of West Virginia. Inconsistent federal firearms law also means and includes any
12 federal firearms law which the enactment, enforcement, or execution of which violates the Second
13 Amendment of the Constitution of the United States.

14 “Inconsistent presidential firearms executive order or action” means an executive order
15 or action issued by the President of the United States relating to the enforcement or execution of
16 an inconsistent federal firearms law.

17 “Inconsistent with the law of West Virginia” in the context of an inconsistent federal
18 firearms law means a federal firearms law which criminalizes the possession of a firearm, firearm
19 accessory, or ammunition for federal purposes when the possession of that firearm, firearm
20 accessory or ammunition would not be, and is not, a violation of the law of the State of West
21 Virginia.

22 “New inconsistent federal firearms law” means an inconsistent federal firearms law that
23 was not in effect prior to January 1, 2021.

24 “New inconsistent presidential firearms executive order or action” means an inconsistent
25 presidential firearms executive order or action which was not in effect prior to January 1, 2021.

26 “Red flag law” means a law under which a person may petition for a court to temporarily
27 take away another person’s right to possess a firearm which it is otherwise lawful under the law
28 of West Virginia for the respondent to possess.

§61-7B-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
3 the United States government under an executive order or action of the President of the United
4 States or under an act of the Congress of the United States. Federal commandeering of West
5 Virginia law-enforcement for purposes of enforcement of federal firearms laws is prohibited.

§61-7B-5. Prohibitions on police activity.

1 (a) No police agency, department, or officer of this state may participate in the execution
2 of a federal search warrant when the only property sought to be taken and seized under the
3 warrant is firearms, firearms accessories, or ammunition which is lawful for the person, whose
4 premises are to be searched, to possess under the laws of this state.

5 (b) No police department, agency or officer of this state may participate in the execution
6 of a federal arrest warrant of a citizen of this state or a person subject to the protections of the
7 state constitution and the laws of West Virginia when the federal arrest warrant charges no crime
8 other than the crime of the possession of firearms, firearm accessories, or ammunition which is
9 lawful for the person who is to be arrested under the warrant to possess under the laws of this
10 state.

11 (c) No police department, agency, or officer of the state may enforce an order under a red
12 flag law against a citizen of this state or a person subject of the protections of the laws of this
13 state when the person against whom the order is directed has the lawful right under the laws of
14 this state to possess firearms.

15 (d) No police department, agency, or officer of this state engaged in a traffic stop or in
16 response to a noise complaint may arrest or detain a person who is subject to the protection of
17 the Constitution and laws of this state for the violation of a new inconsistent federal firearms law
18 or inconsistent presidential executive order or action.

§61-7B-6. Prohibition on court action.

1 No court of this state has authority or jurisdiction to issue an order depriving a citizen of
2 this state of his or her right to possess firearms, firearms accessories, or ammunition under any
3 red flag law.

§61-7B-7. 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
13 conditions are met:

14 (A) The primary purpose of the joint law-enforcement task force is something other than
15 the enforcement of inconsistent federal firearms laws; or

16 (B) The enforcement or investigative duties are primarily related to a violation of state or
17 federal law unrelated to enforcement of inconsistent federal firearms laws.

§61-7B-8. Attorney General authorized and directed to challenge unconstitutional federal actions related to firearms.

1 Whenever any federal statute, presidential executive order, agency order, federal law,
2 rule, or regulation is determined by the Attorney General of this state to infringe upon the right to
3 keep and bear arms affirmed under the Second Amendment to the Constitution of the United
4 States, the Attorney General shall commence and prosecute legal challenges to the federal
5 action. In exercising and discharging the duties required by this section, the Attorney General
6 shall pursue all available appeals in the courts of the United States, and he or she may expend
7 the public moneys necessary for these purposes. The Attorney General may solicit the
8 participation in these efforts of attorneys general of the other states of the United States and join
9 actions brought by attorneys general of other states or other persons seeking to protect such
10 rights.

§61-7B-9. Attorney General to publish model policies.

1 On or before January 1, 2022, 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.

§61-7B-10. 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
3 law-enforcement capacity to enforce a federal statute, executive order, agency order, rule or

4 regulation determined by the Attorney General to infringe upon rights granted by the Second
5 Amendment of the Constitution of the 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 right to keep and bear arms under the Second Amendment to the Constitution of the
11 United States while the constitutionality of the statute, executive order, agency order, rule, or
12 regulation is being challenged judicially pursuant to §61-7B-8 of this code, nor thereafter if the
13 challenge is 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,
16 or who has had his or her certification as a law enforcement officer suspended or revoked, for
17 failing 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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor