

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 353

BY SENATORS TARR, AZINGER, BOLEY, CLEMENTS,
GRADY, KARNES, MARTIN, MAYNARD, NELSON, PHILLIPS,
ROBERTS, RUCKER, SMITH, STOVER, SYPOLT,
WOODRUM, AND SWOPE

[Introduced February 18, 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;
 4 prohibitions; penalties; 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 (1) That the right to keep and bear arms is a fundamental individual right that may not be
 3 infringed, and;

4 (2) That it is the intent of the Legislature in enacting this act to protect West Virginia
 5 employees, including law-enforcement officers, from being directed, through federal executive
 6 orders, agency orders, statutes, laws, rules, or regulations in effect on or after the effective date
 7 of this article, to violate their oath of office and individual rights affirmed under the Second
 8 Amendment to the Constitution of the United States and Article 3, Section 22 of the Constitution
 9 of the State of West Virginia and;

10 (3) That pursuant to and in furtherance of the principles of federalism enshrined in the
 11 Constitution of the United States, and recognized by the United States Supreme Court, the federal
 12 government may not commandeer this State’s officers, agents, or employees to participate in the
 13 enforcement or facilitation of any federal act or regulatory program, and;

14 (4) That this right to be free from the commandeering hand of the federal government has
 15 been most notably recognized by the United States Supreme Court in *Printz v. United States*

16 when the Court held: The Federal Government may neither issue directives requiring the States
17 to address particular problems, nor command the States' officers, or those of their political
18 subdivisions, to administer or enforce a federal regulatory program, and;

19 (5) That the anti-commandeering principles recognized by the Supreme Court in *Printz v.*
20 *United States* are predicated upon the advice of James Madison, who in Federalist Number 46
21 advised "a refusal to cooperate with officers of the Union" in response to either unconstitutional
22 federal measures or constitutional but unpopular federal measures.

§61-7B-3. Prohibitions.

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

4 (1) Knowingly and willingly participate in any way in the enforcement of any federal act,
5 law, order, rule, or regulation regarding a firearm, firearm accessory, or ammunition if the act, law,
6 order, rule, or regulation does not exist under the laws of this state; or

7 (2) Utilize any assets, state funds, or funds allocated by the state to local entities on or
8 after the effective date of this article, in whole or in part, to engage in any activity that aids a
9 federal agency, federal agent, or corporation providing services to the federal government in the
10 enforcement or any investigation pursuant to the enforcement of any federal act, law, order, rule,
11 or regulation regarding a firearm, firearm accessory, or ammunition if the act, law, order, rule, or
12 regulation does not exist under the laws of this state.

§61-7B-4. Penalties.

1 (a) Any agent or employee of this state, or of any political subdivision of this state who
2 knowingly violates the prohibitions in §61-7B-3 of this code shall, on a first violation, be liable for
3 a civil penalty not to exceed \$3,000 which shall be paid into the General Revenue Fund of the
4 State, and on a second or subsequent violation is guilty of a misdemeanor and, upon conviction
5 thereof, fined not more than \$1,000 or confined in jail for not less than 60 days nor more than one

6 year or, or both fined and confined.

7 (b) A political subdivision of this state may not receive state grant funds if the political
8 subdivision adopts a rule, order, ordinance, or policy under which the political subdivision violates
9 §61-7B-3 of this code. State grant funds for the political subdivision shall be denied for the fiscal
10 year following the year in which a final judicial determination in an action brought under this
11 section is made that the political subdivision has intentionally required actions which violate the
12 prohibitions in §61-7B-3 of this code.

§61-7B-5. Severability.

1 The provisions of this article are declared to be severable and if any provision of this article
2 or the application of such provision to any person or circumstance is declared invalid for any
3 reason, such declaration may not affect the validity of the remaining portions of this article.

NOTE: The purpose of this bill is to create the “Second Amendment Preservation Act”.

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