

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Originating

House Bill 5694

By Delegate Householder and Phillips

[Originating in the Committee on Government

Organization; Reported on February 19, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5A-13-1, §5A-13-2, §5A-13-3, §5A-13-4, §5A-13-5, and §5A-13-6, all relating
3 to the Firearms Industry Nondiscrimination Act; establishing the short title; defining terms;
4 establishing application of act to certain government contracts; providing an exception;
5 setting forth when certain contracts are void; prohibiting financial institutions from
6 discriminating against a firearm entity or firearm trade association; specifying the
7 applicability of the prohibition; providing civil remedies for a violation by an individual;
8 providing for enforcement by the Attorney General; providing that an enforcement action
9 by the Attorney General does not prohibit a civil action by an individual; providing remedies
10 in an action by the Attorney General; requiring the Attorney General to submit names of
11 financial institutions in violation to the Governor and to request that the state terminate any
12 business relationship with the financial institution; providing a statute of limitations for
13 actions; and providing exceptions to the prohibition .

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. FIREARMS INDUSTRY NONDISCRIMINATION ACT.

§5A-13-1. Short Title.

1 This Act shall be known and may be cited as the Firearm Industry Nondiscrimination Act.

§5A-13-2. Definitions.

1 For purposes of the Firearm Industry Nondiscrimination Act:

2 (1) "Ammunition" means a loaded cartridge or shot shell, case, primer, projectile, wadding,
3 or propellant powder.

4 (2) "Company" means a for-profit organization, association, corporation, partnership, joint
5 venture, limited partnership, limited liability partnership, or limited liability company, including a
6 wholly owned subsidiary, a majority-owned subsidiary, a parent company, or an affiliate of such an
7 entity that exists to make a profit: *Provided*, That the term does not include a sole proprietorship.

8 (3) "Contract" means a promise or set of promises constituting an agreement between the
9 parties that gives each a legal duty to the other and the right to seek a remedy for the breach of
10 those duties: *Provided*, That the term does not include an agreement related to investment
11 services.

12 (4) "Discriminate against a firearm entity or firearm trade association" means, with respect
13 to the entity or association, to:

14 (A) Refuse to engage in the trade of any goods or services with the entity or association
15 based on its status as a firearm entity or firearm trade association, which includes the lawful
16 products and services provided by, and the lawful practices of, firearm entities and firearm trade
17 associations;

18 (B) Refrain from continuing an existing business relationship with the entity or association
19 based on its status as a firearm entity or firearm trade association, which includes the lawful
20 products and services provided by, and the lawful practices of, firearm entities and firearm trade
21 associations; or

22 (C) Terminate an existing business relationship with the entity or association based on its
23 status as a firearm entity or firearm trade association, which includes the lawful products and
24 services provided by, and the lawful practices of, firearm entities and firearm trade associations;

25 (D) The term does not include the policies of a vendor, merchant, retail seller, or platform
26 that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories;

27 (E) The term also does not include a company's refusal to engage in the trade of any goods
28 or services, decision to refrain from continuing an existing business relationship, or decision to
29 terminate an existing business relationship to comply with federal, state, or local laws, policies, or
30 regulations or a directive by a regulatory agency, or for any traditional business reason that is
31 specific to the customer or potential customer and not based on the status of an entity or
32 association as a firearm entity or firearm trade association, which includes the lawful products and
33 services provided by, and the lawful practices of, firearm entities and firearm trade associations.

34 (5) "Financial institution" means a financial institution as defined in 31 U.S.C. § 5312.

35 (6) "Firearm" means any weapon which will expel a projectile by action of an explosion. For
36 purposes of this article, the term "firearm" includes antique firearms, as defined in §61-7-2 of this
37 code.

38 (7) "Firearm accessories or components" means:

39 (A) Any device specifically adapted to enable the wearing or carrying about one's person or
40 the storage or mounting in or on any conveyance of a firearm and any attachment or device
41 specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the
42 functioning or capabilities of the firearm;

43 (B) Any item that is used in conjunction with or mounted upon a firearm, including but not
44 limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket
45 stocks and grips, speedloaders, braces, ammunition carriers, and lights for target illumination;

46 (C) Any component for making ammunition, reloading materials and equipment,
47 machinery, and tools for manufacturing ammunition; and

48 (D) Detachable firearm magazines.

49 (8) "Firearm entity" means:

50 (A) A firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler,
51 supplier, or retailer; or

52 (B) A shooting range as defined in §61-6-23 of this code.

53 (9) "Firearm trade association" means any person, corporation, unincorporated
54 association, federation, business league, or business organization that:

55 (A) Is not organized or operated for profit and for which none of its net earnings inures to
56 the benefit of any private shareholder or individual;

57 (B) Has two or more firearm entities as members; and

58 (C) Is exempt from federal income taxation under section 501(a) of the Internal Revenue
59 Code of 1986, as an organization described by section 501(c) of such code.

60 (10) "Governmental entity" means:

61 (A) Any state agency; or

62 (B) Any political subdivision of this state.

63 (11) "Sole-source provider" means a supplier who provides goods or services of a unique
64 nature or goods or services that are solely available through the supplier and the supplier is the
65 only practicable source to provide the goods or services.

66 (12) "State agency" means any agency, board, or commission of this state other than the
67 courts and the Legislature.

§5A-13-3. Application of act to certain contracts.

1 (a) The Firearm Industry Nondiscrimination Act shall apply to a contract that:

2 (1) Is between a governmental entity and a company with at least ten full-time employees;

3 (2) Has a value of at least \$100,000 that is paid wholly or partly from public funds of the
4 governmental entity; and

5 (3) Is entered into on or after the effective date of this act.

6 (b) Except as provided in §5A-13-4 of this code, a governmental entity may not enter into a
7 contract for the purchase of goods or services with any company that discriminates against any
8 firearm entity or firearm trade association.

9 (c) Any contract to which §5A-13-3(a) of this code applies that violates the requirements of
10 this article shall be void as against public policy.

§5A-13-4. Exceptions.

1 The requirements of §5A-13-3 of this code do not apply if a governmental entity contracts
2 with a sole-source provider.

§5A-13-5. Unlawful discrimination against a firearm entity or firearm trade association; exception.

2 (a) A financial institution shall not discriminate against a firearm entity or firearm trade
3 association because the firearm entity or firearm trade association supports or is engaged in the
4 lawful commerce of firearms, firearm accessories, or ammunition products.

5 (b) This section shall not apply to a financial institution that chooses not to provide services
6 to a firearm entity or firearm trade association for a business or financial reason or due to a
7 directive by the state banking commissioner or a bank supervisory agency as defined by §31A-8D-
8 2(c) of this code. This section shall also not apply to a financial institution that has a written policy
9 prohibiting the institution from discriminating against firearm entities or firearm trade associations
10 as those terms are defined in §5A-13-2 of this code. For the purposes of this subsection, “business
11 or financial reason” does not include a policy of refusing to provide financial services or otherwise
12 discriminating when providing financial services to a firearm entity.

§5A-13-6. Remedies; attorney general notice; statute of limitations.

1 (a) A person who is injured by a violation of §5A-13-5 of this code may bring a civil action
2 against the financial institution in his or her own name in the circuit court for the county where the
3 alleged violation occurred. If the injured person prevails on his or her claim, then the court shall
4 award the injured person reasonable attorney fees and costs. The court may further award the
5 prevailing injured person any of the following:

6 (1) Actual and compensatory damages;

7 (2) Punitive or exemplary damages;

8 (3) Injunctive relief; and

9 (4) Any other appropriate civil relief.

10 (b) The Attorney General may file a civil action for a violation of §5A-3-5 of this code:
11 Provided, That the authority granted to the Attorney General does not affect the right of a person
12 who is injured by a violation of §5A-3-5 of this code to bring an action for a violation of the rights
13 protected under this article. The Attorney General may request the court to do any of the following:

14 (1) Issue a declaratory judgment that an act or practice violates this article;

15 (2) Enjoin any act or practice that violates this article by issuing a temporary restraining
16 order or preliminary or permanent injunction, without a bond, after providing appropriate notice;
17 and

18 (c) The Attorney General shall submit the name of any financial institution that has violated
19 this article to the Governor and request that the state terminate any business relationship with the
20 financial institution.

21 (d) Any civil action brought pursuant to this section shall be commenced within not more
22 than two years after the date that the violation is discovered or should reasonably have been
23 discovered.

24 (e) The remedies and actions available or required under this section shall not be
25 applicable if a financial institution has a written policy prohibiting the institution from discriminating
26 against firearm entities as those terms are defined in §5A-13-2 of this code.

NOTE: The purpose of this bill relates to the Firearms Industry Nondiscrimination 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.