

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 685

By Senator Rose

[Reported February 3, 2026, from the Committee on
Energy, Industry, and Mining]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §22-35-1, §22-35-2, §22-35-3, §22-35-4, §22-35-5, and §22-35-6, relating
 3 generally to creating the Natural Resources Anti-Commandeering Act; stating legislative
 4 findings and intent; prohibiting agencies of this state and political subdivisions or officers or
 5 employees thereof from knowingly and willingly participating in the enforcement of any
 6 federal act, law, order, rule, or regulation relating to coal, oil, gas, timber, or other extractive
 7 resources which do not exist under the laws of this state and prohibiting said agencies,
 8 subdivisions, and officers or employees from being compelled to participate in such
 9 enforcement; prohibiting assets or funds of the state from being used in activity assisting
 10 enforcement of any federal act, law, order, rule, or regulation relating to coal, oil, gas,
 11 timber, or other extractive resources which do not exist under the laws of this state;
 12 requiring and authorizing the West Virginia Attorney General to engage in certain legal
 13 challenges to any presidential executive order or a federal statute, agency order, law, rule,
 14 or regulation that he or she determines infringes upon the right to be free from the federal
 15 commandeering of natural resources and authorizing expenditure of funds therefor;
 16 requiring the Attorney General to publish certain guidance policies regarding resistance to
 17 federal commandeering and lawful measures for protecting state citizens from the
 18 consequences of federal commandeering; providing certain immunity; and authorizing
 19 reimbursement of certain attorney's fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. NATURAL RESOURCES ANTI-COMMANDEERING ACT.

§22-35-1. **Short title.**

1 This article is known and may be cited as the "Natural Resources Anti-Commandeering
 2 Act".

§22-35-2. **Legislative findings and intent.**

1 (a) It is the intent of the Legislature in enacting this article to protect West Virginia

employees, including, but not limited to, law-enforcement officers, from being directed to violate their oaths of office and rights affirmed under the Tenth Amendment to the Constitution of the United States, whether through federal executive orders, agency orders, statutes, laws, rules, or regulations.

(b) The Legislature finds that:

(1) Pursuant to and in furtherance of the principles of federalism enshrined in the Constitution of the United States, and recognized by the United States Supreme Court, the federal government may not commandeer this state's officers, agents, or employees to participate in the enforcement or facilitation of any federal act or regulatory program;

(2) The right to be free from the commandeering hand of the federal government has been recognized by the United States Supreme Court in *New York v. United States* (1992) and *Printz v. United States* (1997), among other cases. The court consistently has held that the federal government may neither issue directives requiring the states nor their political subdivisions to address particular problems, nor command the states' nor their political subdivisions' officers to administer or enforce a federal regulatory program; and

(3) The anti-commandeering principles recognized by the United States Supreme Court in *New York v. United States* (1992) and *Printz v. United States* (1997), among other cases, are predicated upon the advice of James Madison who, in Federalist Number 46, advised engaging in "a refusal to cooperate with officers of the Union" in response to either unconstitutional federal measures or constitutional but unpopular federal measures.

§22-35-3.

Prohibitions.

(a) Except in compliance with a lawful court order, and notwithstanding any state law, regulation, rule, or order to the contrary, an agency or political subdivision of this state or an employee or officer of an agency or political subdivision of this state acting in his or her official capacity may not:

(1) Knowingly and willingly participate in any way in the enforcement of any federal order, statute, law, rule, or regulation relating to coal, oil, gas, timber, or other extractive resources, or

downstream industries related to such extractive resources, if the order, statute, law, rule, or regulation does not exist under the laws of this state; nor

(2) Utilize any assets, state funds, or funds allocated by the state to any local entity, in whole or in part, to engage in any activity that aids a federal agency, federal agent, or corporation providing services to the federal government in the enforcement, or any investigation pursuant to the enforcement, of any federal order, statute, law, rule, or regulation relating to coal, oil, gas, timber, or other extractive resources, or downstream industries related to such extractive resources, if the order, statute, law, rule, or regulation does not exist under the laws of this state.

§22-35-4. Attorney General to challenge unconstitutional federal actions related to natural resource commandeering.

(a) If the West Virginia Attorney General determines that a presidential executive order or a federal statute, agency order, law, rule, or regulation infringes upon the right to be free from the federal commandeering of natural resources, the Attorney General shall commence and prosecute a legal challenge to the federal action.

(b) In exercising and discharging the duties required by this section, the Attorney General:

(1) Shall pursue all available appeals in the courts of the United States;

(2) May expend the public moneys necessary for the purposes of this section;

(3) May solicit attorneys general of other states to participate in legal actions brought pursuant to this section; and

(4) May join legal actions brought by attorneys general of other states or other persons seeking to protect the right to be free from federal commandeering of natural resources.

§22-35-5. Attorney General to publish model policies.

On or before January 1, 2027, and as often thereafter as he or she considers necessary, the West Virginia Attorney General shall publish policies for agents and agencies of this state and of the political subdivisions of this state. The policies shall provide guidance on resistance to federal commandeering and on lawful measures that can be taken by law-enforcement agencies to protect state citizens from the consequences of any attempts or efforts at federal

6 commandeering.

§22-35-6.

Immunity.

1 (a) An agent or officer of this state or any political subdivision of the state may not:

2 (1) 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, law, rule, or
4 regulation determined by the West Virginia Attorney General to infringe upon rights granted by the
5 Tenth Amendment to the Constitution of the United States; nor

6 (2) Be held liable civilly or criminally, have his or her employment terminated, nor be
7 decertified as a law-enforcement officer for refusing to enforce a federal statute, executive order,
8 agency order, law, rule, or regulation determined by the West Virginia Attorney General to infringe
9 upon the right to be free from federal commandeering of natural resources of this state:

10 (A) While the constitutionality of the federal statute, executive order, agency order, law,
11 rule, or regulation is being challenged judicially pursuant to section §22-35-4 of this code; nor

12 (B) Thereafter, if the legal challenge is successful.

13 (b) Any head of an agency of this state or a political subdivision, or officer under his or her
14 command, is entitled to reimbursement of reasonable attorney's fees related to his or her legal
15 defense for failing or refusing to enforce a federal statute, executive order, agency order, law, rule,
16 or regulation pursuant to this section, if he or she has:

17 (1) Been charged criminally or civilly;

18 (2) Had his or her employment terminated; or

19 (3) Had his or her certification as a law enforcement officer suspended or revoked.