

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 365

BY SENATORS GRADY, KARNES, PHILLIPS, SMITH,

ROBERTS, MARTIN, RUCKER, AND AZINGER

[Introduced February 19, 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, and §61-7B-4, all relating to creating the West
 3 Virginia Firearms Protection Act; providing definitions; ensuring that state and local
 4 governments do not enforce federal firearms regulations or rules that are in conflict with
 5 the state code or that do not exist in state code; providing a criminal penalty for the
 6 violation of the terms of this article; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. WEST VIRGINIA FIREARMS PROTECTION ACT.

§61-7B-1. Short title.

1 This article may be cited as the “West Virginia Firearms Protection Act.”

§61-7B-2. Definitions.

1 In this article:

2 (1) “Firearm” means any weapon which will expel a projectile by action of an explosion.

3 (2) “Firearm accessory” means an item that is used in conjunction with or mounted on a
 4 firearm but is not essential to the basic function of the firearm. The term includes a detachable
 5 firearm magazine.

§61-7B-3. State and local government policy regarding enforcement of federal firearms laws; criminal penalties.

1 (a) This section applies to:

2 (1) The state of West Virginia, including an agency, department, commission, bureau,
 3 board, office, council, court, or other entity that is in any branch of state government and that is
 4 created by the constitution or a statute of this state, including a university system or a system or
 5 higher education;

6 (2) The governing body of a municipality, county, or special district or authority;

7 (3) An officer, employee, or other body that is part of a municipality, county, or special
 8 district or authority, including a sheriff, municipal police department, municipal attorney or county

9 attorney; and

10 (b) An entity described in subsection (a) may not adopt a rule, order, ordinance, or policy
11 under which the entity enforces, or by consistent action allows the enforcement of, a federal
12 statute, order, rule or regulation enacted on or after January 1, 2022, that purports to regulate a
13 firearm, a firearm accessory, or firearm ammunition if the statute, order, rule or regulation, such
14 as capacity or size limitation, a registration requirement, or a background check, that does not
15 exist under the laws of this state.

16 (c) No entity described in subsection (a) and no person employed by or otherwise under
17 the direction or control of the entity may enforce or attempt to enforce any federal statute, order,
18 rule, or regulation described in subsection (b).

19 (d) An entity described by subsection (a) may not receive state grant funds if the entity
20 adopts a rule, order, ordinance, or policy under which the entity enforces any federal laws
21 described in subsection (b), or by consistent actions, allows the enforcement of any federal laws
22 described by this section. State grant funds for the entity shall be denied for the fiscal year
23 following the year in which a final judicial determination in an action brought under this section is
24 made that the entity has violated the provisions of this section.

25 (f) Any citizen residing in the jurisdiction of an entity described in subsection (a) may file a
26 complaint with the Attorney General's office if the citizen offers evidence to support an allegation
27 that the entity has adopted a rule, order, ordinance, or policy under which the entity enforces the
28 federal laws described by subsection (d) of this section. The citizen must include with the
29 complaint the evidence the citizen has that supports the complaint.

30 (g) If the Attorney General's office determines that a complain filed under subsection (f) of
31 this section is valid, the Attorney General's office may file a petition for a writ of mandamus or
32 apply for other appropriate equitable relief in Kanawha County Circuit Court, or in a county in
33 which the principal office of an entity is located to compel the entity that adopts a rule, order,
34 ordinance or policy under which the local entity enforces the laws described by subsection (b) of

35 this section or that, by consistent actions, allows the enforcement of the laws described in
36 subsection (b) of this section. The Attorney General's office may recover reasonable expenses
37 incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees,
38 investigative costs, witness fees, and deposition costs.

39 (h) An appeal of a suit brought under subsection (g) of this section is governed by the
40 procedures for accelerated appeals in civil cases under the West Virginia Rules of Appellate
41 Procedure. The appellate court shall render its final order of judgment with the least possible
42 delay.

43 (i) A person commits an offense if, in the person's official capacity as an officer of an entity
44 described by subsection (a), or as a person employed by or otherwise under the direction or
45 control of the entity, or under color of law, knowingly enforces or attempts to enforce any federal
46 statute, order, rule or regulation described by subsection (b). An offense under this section shall
47 be classified as a misdemeanor and, upon conviction, shall be confined in jail not more than six
48 months, or fined not exceeding \$100.

§61-7B-4. Effective date.

1 This act shall become effective on July 1, 2021.

NOTE: The purpose of this bill is to establish the West Virginia Firearms Protection 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.