WEST VIRGINIA CODE CHAPTER 5A ARTICLE 14

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§5A-14-1. Short Title.

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

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§5A-14-2. Definitions.

For purposes of the Firearm Industry Nondiscrimination Act:

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

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

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

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

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

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

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

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

(4) "Financial institution" means an entity that does business or have a contract with this state, and is one of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act;

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(B) A commercial bank or trust company;

(C) A credit union; or

(D) An operator of a credit card system.

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

(6) "Firearm accessories or components" means:

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

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

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

(D) Detachable firearm magazines.

(7) "Firearm entity" means:

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

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

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

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

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

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

(9) "Governmental entity" means:

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(A) Any state agency; or

(B) Any political subdivision of this state.

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

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

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§5A-14-3. Application of act to certain contracts.

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

(1) Is between a governmental entity and a financial institution; and

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

(b) Except as provided in §5A-13-4 of this code, a governmental entity may not enter into a contract with any financial institution that discriminates against any firearm entity or firearm trade association.

(c) Any contract to which subsection (a) of this section applies shall contain provisions providing for the termination of the contract within one year of the governmental entity's determination that a violation of the requirements of this section have occurred. The governmental entity shall terminate any business relationship with any financial institution in a commercially reasonable manner within one year of the governmental entity's determination that a violation of the requirements of this section have occurred.

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§5A-14-4. Exceptions.

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

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§5A-14-5. Unlawful discrimination against a firearm entity or firearm trade association; exception.

(a) A financial institution that does business or has a contract with this state may not discriminate against a firearm entity or firearm trade association because the firearm entity or firearm trade association supports or is engaged in the lawful commerce of firearms, firearm accessories, or ammunition products.

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

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§5A-14-6. Remedies; attorney general notice; statute of limitations.

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

(1) Actual and compensatory damages;

(2) Punitive or exemplary damages;

(3) Injunctive relief; and

(4) Any other appropriate civil relief.

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

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

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

(c) The Attorney General shall submit the name of any financial institution that has violated this article to the Governor and request that the state terminate any business relationship with the financial institution in a commercially reasonable manner within one year.

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

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

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