

SF0081 Amendment

SENATE FILE NO. SF0081

Second Amendment Preservation Act.

Tracked-in Amendment

A BILL

for

1 AN ACT relating to firearms; making legislative findings;

2 invalidating certain federal laws that limit the right to

3 bear arms; prohibiting enforcement of invalidated federal

4 laws; imposing employment consequences for those enforcing

5 invalidated federal laws; waiving sovereign immunity as

6 specified; ~~providing for a civil action and a civil penalty;~~

7 ~~providing for severability; specifying applicability;~~ and

8 providing for an effective date.

9
10 Be It Enacted by the Legislature of the State of Wyoming:

11
12 **Section 1.**

13
14 (a) The legislature finds that:

1 (1) The Legislature is firmly resolved to support
2 and defend the constitution of the United States against every
3 aggression, whether foreign or domestic, and is duty bound to
4 oppose every infraction of those principles that constitute
5 the basis of the United States because only a faithful
6 observance of those principles can secure the union's
7 existence and the public happiness;

8
9 (11) Acting through the constitution of the United
10 States, the people of the several states created the federal
11 government to be their agent in the exercise of a few defined
12 powers, while reserving for the state governments the power
13 to legislate on matters concerning the lives, liberties and
14 properties of citizens in the ordinary course of affairs;

15
16 (111) The limitation of the federal government's
17 power is affirmed under the tenth amendment of the
18 constitution of the United States, which defines the total
19 scope of federal power as being that which has been delegated
20 by the people of the several states to the federal government,
21 and all power not delegated to the federal government in the
22 constitution of the United States is reserved to the states
23 respectively or to the people themselves;

1
2 (iv) If the federal government assumes powers that
3 the people did not grant it in the constitution of the United
4 States, its acts are unauthoritative, void and of no force;

5
6 (v) The several states of the United States
7 respect the proper role of the federal government but reject
8 the proposition that such respect requires unlimited
9 submission. If the government, created by a compact among the
10 states, was the exclusive or final judge of the extent of the
11 powers granted to it by the states through the constitution
12 of the United States, the federal government's discretion,
13 and not the constitution of the United States, would
14 necessarily become the measure of those powers. To the
15 contrary, as in all other cases of compacts among powers
16 having no common judge, each party has an equal right to judge
17 for itself as to whether infractions of the compact have
18 occurred, as well as to determine the mode and measure of
19 redress. Although the several states have granted supremacy
20 to laws and treaties made under the powers granted in the
21 constitution of the United States, such supremacy does not
22 extend to various federal statutes, executive orders,
23 administrative orders, court orders, rules, regulations or

1 other actions that collect data or restrict or prohibit the
2 manufacture, ownership and use of firearms, firearm
3 accessories or ammunition exclusively within the borders of
4 Wyoming. Rather, such statutes, executive orders,
5 administrative orders, court orders, rules, regulations and
6 other actions exceed the powers granted to the federal
7 government except to the extent they are necessary and proper
8 for governing and regulating the armed forces of the United
9 States or for organizing, arming and disciplining militia
10 forces actively employed in the service of the armed forces
11 of the United States;

12

13 (vi) The people of the several states have given
14 congress the power "to regulate commerce with foreign
15 nations, and among the several states", but "regulating
16 commerce" does not include the power to limit citizens' right
17 to keep and bear arms in defense of their families, neighbors,
18 persons or property or to dictate what sort of arms and
19 accessories law abiding Wyomingites may buy, sell, exchange
20 or otherwise possess within the borders of this state;

21

22 (vii) The people of the several states have also
23 granted congress the power "to lay and collect taxes, duties,

1 imports, and excises, to pay the debts, and provide for the
2 common defense and general welfare of the United States" and
3 "to make all laws which shall be necessary and proper for
4 carrying into execution the powers vested by the constitution
5 of the United States in the government of the United States,
6 or in any department or office thereof". These constitutional
7 provisions merely identify the means by which the federal
8 government may execute its limited powers and shall not be
9 construed to grant unlimited power because to do so would be
10 to destroy the carefully constructed equilibrium between the
11 federal and state governments. Consequently, the legislature
12 rejects any claim that the taxing and spending powers of
13 congress may be used to diminish in any way the right of the
14 people to keep and bear arms;
15
16 (viii) The people of Wyoming have vested the
17 legislature with the authority to regulate the manufacture,
18 possession, exchange and use of firearms within the borders
19 of this state, subject only to the limits imposed by the
20 second amendment of the constitution of the United States and
21 the constitution of Wyoming; and
22

1 (ix) The Wyoming legislature strongly promotes

2 responsible gun ownership, including parental supervision of

3 minors in the proper use, storage and ownership of all

4 firearms, the prompt reporting of stolen firearms and the

5 proper enforcement of all state gun laws. The Wyoming

6 legislature hereby condemns any unlawful transfer of firearms

7 and the use of any firearm in any criminal or unlawful

8 activity.

10 **Section 2.** W.S. 6-8-407 through ~~6-8-409~~ **and 6-8-408** are

11 created to read:

13 **6-8-407. Invalidation of certain federal laws.**

15 (a) The following federal acts, laws, executive orders,

16 administrative orders, court orders, rules and regulations

17 **enacted on and after April 1, 2021** shall be considered

18 infringements on the people's right to keep and bear arms, as

19 guaranteed by the second amendment of enacted on and the

20 constitution of the United States and article 1, section 24

21 of the Wyoming constitution, within the borders of this state

22 including, but not limited to:

1 (1) Any tax, levy, fee or stamp imposed on
2 firearms, firearm accessories or ammunition not common to all
3 other goods and services and that might reasonably be expected
4 to create a chilling effect on the purchase or ownership of
5 those items by law abiding citizens;
6
7 (1i) Any registering or tracking of firearms,
8 firearm accessories or ammunition that might reasonably be
9 expected to create a chilling effect on the purchase or
10 ownership of those items by law abiding citizens;
11
12 (1ii) Any registering or tracking of the owners of
13 firearms, firearm accessories or ammunition that might
14 reasonably be expected to create a chilling effect on the
15 purchase or ownership of those items by law abiding citizens;
16
17 (1iv) Any act forbidding the possession, ownership
18 or use or transfer of a firearm, firearm accessory or
19 ammunition by law abiding citizens; or
20
21 (v) Any act ordering the confiscation of firearms,
22 firearm accessories or ammunition from law abiding citizens.
23

1 (b) All federal acts, laws, executive orders,
2 administrative orders, court orders, rules and regulations,
3 ~~regardless if enacted before or after this section enacted on~~
4 and after April 1, 2021, that infringe on the people's right
5 to keep and bear arms as guaranteed by the second amendment
6 of the constitution of the United States and article 1,
7 section 24 of the Wyoming constitution shall be invalid in
8 this state, shall not be recognized by this state, shall be
9 specifically rejected by this state and shall be considered
10 null, void and of no effect in this state.
11
12 (c) It shall be the duty of the courts and law
13 enforcement agencies of this state to protect the rights of
14 law abiding citizens to keep and bear arms within the borders
15 of this state and to protect these rights from the
16 infringements defined under subsection (a) of this section.
17
18 (d) For purposes of this section, "law abiding citizen"
19 means an individual who is not otherwise precluded under state
20 law from possessing a firearm and shall not be construed to
21 include anyone who is not legally present in the United States
22 or the state of Wyoming.
23

1 6-8-408. Prohibition on enforcement of invalidated
2 federal laws; liability.

3
4 (a) No person, including any public officer or employee

5 of this state or, or any political subdivision or law
6 enforcement agency of this state that employs an official,
7 agent, employee or deputy of the government of the United

8 States acting under the color of federal law within the

9 borders of this state any political subdivision of this state,
10 shall have the authority to enforce or attempt to enforce or

11 to give material aid and support to another who enforces or
12 attempts to enforce any federal acts, laws, executive orders,
13 administrative orders, court orders, rules, regulations,

14 statutes or ordinances enacted on and after April 1, 2021

15 infringing on the right to keep and bear arms as enumerated
16 in W.S. 6-8-407(a).

17
18 (b) Any public officer or employee of this state or any

19 political subdivision of this state who, or any political
20 subdivision or law enforcement agency of this state that

21 employs an official, agent, employee or deputy of the
22 government of the United States acting under the color of

23 federal law within the borders of this state, which acts

1 knowingly to violate the provisions of subsection (a) of this
2 section or otherwise knowingly deprives a resident of Wyoming
3 of the rights or privileges ensured by the second amendment
4 of the constitution of the United States or article 1, section
5 24 of the Wyoming constitution, while acting under the color
6 of any state or federal law, shall be liable to the injured
7 party in an action at law, suit in equity, declaratory
8 judgment or other proper proceeding for redress. In such
9 actions, :
10
11 (1) Any person who is aggrieved by a violation of this
12 section shall have standing to pursue an action in the
13 district court of the county in which the action allegedly
14 occurred;
15 (1.1) The court may award the prevailing party, other
16 than the state of Wyoming or any political subdivision of the
17 state;
18 (A) Not less than fifty thousand dollars 14 (\$50,000.00)
19 per violation;
20 (B) Reasonable attorney's fees and costs. Sovereign,
21 official or qualified immunity shall not be an affirmative
22 defense in such actions

(iii) If a court imposes a civil penalty as provided in

subparagraph (i) (A) of this subsection, attorney's fees and

costs as provided in subparagraph (i) (B) of this subsection,

or both a penalty and fees and costs, then the state,

political subdivision or law enforcement agency that employs

the person who violated W.S. 6-8-407(a) or subsection (a) of

this section shall be required to pay any penalty, fees and

costs that the court orders.

(c) Nothing in this section shall limit the authority or

discretion of a public officer or an employee of this state

or any political subdivision of this state to investigate,

charge or prosecute any person for felonies that do not

constitute the infringements described under W.S. 6-8-407(a)

and subsection (a) of this section. As used in this

subsection, "investigate" may include securing a weapon in

the course of law enforcement safeguarding an area when

performing their duties.

(d) Nothing in this section shall create for a person

charged with a crime a defense against being charged or

prosecuted for felony criminal activity that does not

constitute an infringement described under W.S. 6-8-407(a) or

1 subsection (a) of this section, provided that the alleged

2 criminal activity was not initially discovered incident to a

3 violation of subsection (a) of this section or W.S. 6-8-

4 407(a).

5
6 ~~6-8-409. Law enforcement employment ineligibility.~~

7
8 ~~(a) Any public officer or employee of this state or any~~

9 ~~political subdivision of this state, who acts as an official,~~

10 ~~agent, employee, or deputy of the government of the United~~

11 ~~States, or otherwise acting under the color of federal law~~

12 ~~within the borders of this state, and knowingly enforces or~~

13 ~~attempts to enforce any of the infringements identified in~~

14 ~~W.S. 6-8-407(a) or gives material aid and support to the~~

15 ~~efforts of others who enforce or attempt to enforce any of~~

16 ~~the infringements identified in W.S. 6-8-407(a) shall be~~

17 ~~permanently ineligible to serve as a law enforcement officer~~

18 ~~or to supervise law enforcement officers for the state or any~~

19 ~~political subdivision of the state.~~

20
21 ~~(b) Neither the state nor any political subdivision of~~

22 ~~the state shall employ as a law enforcement officer or~~

1 ~~supervisor of law enforcement officers any person who is~~
2 ~~ineligible to serve in such capacity under this section.~~

3
4 ~~(c) Any person residing or conducting business in a~~

5 ~~jurisdiction who believes that a law enforcement officer or~~
6 ~~supervisor of law enforcement officers of such jurisdiction~~
7 ~~has taken action that would render that officer or supervisor~~
8 ~~ineligible under this section to serve in such capacity shall~~
9 ~~have standing to pursue an action for declaratory judgment in~~

10 ~~the district court of the county in which the action allegedly~~
11 ~~occurred, or in the district court of Laramie county, with~~
12 ~~respect to the employment eligibility of the law enforcement~~
13 ~~officer or the supervisor of law enforcement officers under~~
14 ~~this section.~~

15
16 ~~(d) If a court determines that a law enforcement~~
17 ~~officer or supervisor of law enforcement officers has taken~~
18 ~~any action that would render him ineligible to serve in that~~
19 ~~capacity under this section:~~

20
21 ~~(i) The law enforcement officer or supervisor of~~
22 ~~law enforcement officers shall immediately be terminated from~~
23 ~~his position; and~~

(11) The jurisdiction that had employed the
ineligible law enforcement officer or supervisor of law
enforcement officers shall be required to pay the court costs
and attorney's fees associated with the declaratory judgment
action that resulted in the finding of illegality.

~~Section 3. W.S. 1-39-104(a) is amended to read:~~

~~1-39-104. Granting immunity from tort liability;
liability on contracts; exceptions.~~

(a) A governmental entity and its public employees
while acting within the scope of duties are granted immunity
from liability for any tort except as provided by W.S.
1-39-105 through 1-39-112 and 6-8-408(b). Any immunity in
actions based on a contract entered into by a governmental
entity is waived except to the extent provided by the contract
if the contract was within the powers granted to the entity
and was properly executed and except as provided in W.S.
1-39-120(b). The claims procedures of W.S. 1-39-113 apply to
contractual claims against governmental entities.

1 ~~Section 4.~~ Section 3. If any provision of this act or
2 the application thereof to any person or circumstance is held
3 invalid the invalidity does not affect other provisions or
4 applications of the section or related sections which can be
5 given effect without the invalid provision or application,
6 and to this end the provisions are severable.

7
8 ~~Section 5.~~ Section 4. This act is effective July 1,
9 2021 immediately upon completion of all acts necessary for a
10 bill to become law as provided by Article 4, Section 8 of the
11 Wyoming Constitution.

12
13 (END)