

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4098

BY DELEGATES HOWELL, J. JEFFRIES, WAXMAN, CADLE,

BIBBY, D. JEFFRIES, HANNA, KUMP, COOPER, PHILLIPS

AND BARNHART

[Introduced January 10, 2020; 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 §2-4-1, §2-4-2, §2-4-3, §2-4-4 and §2-4-5, all relating to the second
3 amendment sanctuary law; legislative findings; prohibitions; penalties and severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SECOND AMENDMENT SANCTUARY ACT.

§2-4-1. Title.

1 This article shall be known as the “Second Amendment Sanctuary Law.”

§2-4-2. Legislative findings.

1 (a) Acting through the United States Constitution, the people created government to be
2 their agent in the exercise of a few defined powers, while reserving to the citizens the right to
3 decide on matters which concern their lives, liberty and property in the ordinary course of affairs;

4 (b) The second amendment to the Constitution states: “A well-regulated militia being
5 necessary to the security of a free state, the right of the people to keep and bear arms shall not
6 be infringed”;

7 (c) The right of the people to keep and bear arms is further protected from infringement
8 by the state and local governments under the Ninth, Tenth, and Fourteenth Amendments to the
9 Constitution;

10 (d) The United States Supreme Court in *District of Columbia v. Heller* recognized the
11 individual’s right to keep and bear arms, as protected by the second amendment of the
12 Constitution. Justice Antonin Scalia’s prevailing opinion in that case stated that the second
13 amendment protects an individual’s right to possess a firearm unconnected with service in a
14 militia, and the right to use that firearm for traditionally lawful purposes, such as self-defense
15 within the home;

16 (e) Section one of the fourteenth amendment to the Constitution states “No state shall
17 make or enforce any law which shall abridge the privileges or immunities of citizens of the United
18 States; nor shall any state deprive any person of life, liberty or property without due process of

19 law; nor deny to any person within its jurisdiction the equal protection of the laws”;

20 (f) The Supreme Court recognized in *McDonald v. City of Chicago* that the second
21 amendment to the Constitution was incorporated by the fourteenth amendment and thereby made
22 applicable to the states;

23 (g) The right to be free from the commandeering hand of government has been recognized
24 by the Supreme Court in *Printz v. United States*. The Court held: “The federal government may
25 neither issue directives requiring the states to address particular problems, nor command the
26 states’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory
27 program.” The anti-commandeering principles recognized by the Supreme Court in this case are
28 predicated upon the advice of James Madison, who in Federalist #46 advised “a refusal to
29 cooperate with officers of the Union” in response to either unconstitutional federal measures or
30 constitutional but unpopular federal measures;

31 (h) Therefore, the right to keep and bear arms is a fundamental individual right that shall
32 not be infringed; and all local, state and federal acts, laws, orders rules or regulations regarding
33 firearms, firearm accessories and ammunition are a violation of the second amendment;

34 (i) State governments have the legal authority to refuse to cooperate with federal firearm
35 laws that violate those rights and to proclaim a second amendment sanctuary for law-abiding
36 citizens; and

37 (j) Through the enactment of this article, West Virginia is hereby a second amendment
38 sanctuary state.

§2-4-3. Prohibitions.

1 Notwithstanding any other law, rule or order to the contrary, no agent, department,
2 employee or official of this state or a political subdivision of this state, while acting in their official
3 capacity may:

4 (1) Knowingly and willingly participate in any way in the enforcement of any unlawful act,
5 as defined herein, regarding personal firearms, firearm accessories or ammunition; or

6 (2) Utilize any assets, funds or funds allocated by any entity to the state, in whole or in
7 part, to engage in any activity that aids in the enforcement or investigation relating to an unlawful
8 act in connection with personal firearms, firearm accessories or ammunition.

§2-4-4. Penalties.

1 (a) An “unlawful act” consists of any federal or state act, law, order, rule or regulation which
2 restricts an individual’s constitutional right to keep and bear arms, including any federal or state
3 act, law, order, rule or regulation which bans or effectively bans registers or effectively registers
4 or limits the lawful use of firearms, firearm accessories or ammunition, other than a fully automatic
5 firearm which may be made unlawful by federal law. Any such “unlawful act” is invalid in this state
6 and may not be recognized in this state, is specifically rejected by the voters of this state and is
7 null, void, and of no effect in this state and includes, but is not limited to, the following:

8 (1) Any tax, levy, fee or stamp imposed on firearms, firearm accessories or ammunition
9 not common to all other goods and services on the purchase or ownership of those items by
10 citizens;

11 (2) Any registration or tracking of firearms, firearm accessories or ammunition;

12 (3) Any registration or tracking of the owners of firearms, firearm accessories or
13 ammunition;

14 (4) Any act forbidding the possession ownership or use or transfer of any type of firearm,
15 firearm accessory or ammunition by citizens of the legal age of 18 and over, other than pursuant
16 to federal law background check requirements for transfers or purchases through FFL dealers;

17 (5) Any act ordering the confiscation of firearms, firearm accessories or ammunition from
18 citizens;

19 (6) Any prohibition, regulation or use restriction related to the ownership or the
20 constitutionality guaranteed lawful use or carry of nonfully automatic firearms; and

21 (7) Any prohibition, regulation or use restriction limiting hand grips, stocks, flash
22 suppressors, bayonet mounts, magazine capacity, bump stocks, suppressors or types of

23 ammunition available for sale, possession or use by citizens.

24 (b) Anyone within the jurisdiction of this state accused to be in violation of this article may
25 be sued in the circuit court for declaratory and injunctive relief, damages and attorneys' fees.

26 Neither sovereign nor official or qualified immunity is an affirmative defense in cases pursuant to
27 this section.

28 (c) Any law enforcement official may enforce this law.

29 (d) Any person who violates the provisions of this article may be subject to a civil fine,
30 \$2,000 for an individual or \$4,000 for a corporation.

31 (e) Exceptions to this article include the following:

32 (1) The protections provided to citizens by this law do not apply to persons who have been
33 convicted of felony crimes or who are prohibited from possessing firearms under federal law;

34 (2) This article is not intended to prohibit or affect in any way the prosecution of any crime
35 for which the use of, or possession of, a firearm is an aggravating factor or enhancement to an
36 otherwise independent crime;

37 (3) This article does not permit or otherwise allow the possession of firearms in Federal
38 buildings; and

39 (4) This article does not prohibit individuals in this state from voluntarily participating in
40 assisting in permitting, licensing, registration or other processing of applications for concealed
41 carry permits, or other firearm, firearm accessory or ammunition, license or registration process
42 that may be required by law.

§2-4-5. Severability.

1 The provisions of this article are hereby declared to be severable, and if any provision of
2 this article or the application of such provision to any person or circumstance is declared invalid
3 for any reason, such declaration does not affect the validity of the remaining portions of this article.

NOTE: The purpose of this bill is to enact a second amendment sanctuary law.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.