

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5396

By Delegates C. Pritt, McGeehan, Phillips, Kimble,
Steele, Jeffries, Coop-Gonzalez, Kirby, Crouse, Dean,
and Dillon

[Introduced January 31, 2024; 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 §61-7C-1, §61-7C-2, and §61-7C-3, all relating to creating the Second
 3 Amendment Freedom and Enforcement (SAFE) Act;

Be it enacted by the Legislature of West Virginia:

ARTICLE 7C. SECOND AMENDMENT FREEDOM AND ENFORCEMENT (SAFE) ACT.

§61-7C-1. Legislative findings; definitions; state cause-of-action.

1 (a) Legislative Findings:

2 (1) Government’s most important responsibility is to protect rights under the laws and
 3 constitutions of this state and the United States.

4 (2) Government’s violation of rights diminishes the lives, liberty, property, and pursuits of
 5 individuals.

6 (3) Government’s failure to remedy a violation of rights imposes an unjust cost on an
 7 injured individual.

8 (4) Among the most important is the right to self-protection guaranteed by the constitutions
 9 of West Virginia and the United States.

10 (5) Government’s legitimacy is threatened by the absence of a meaningful civil process for
 11 injured individuals to seek redress of violations of rights.

12 (6) Government is responsible for hiring, training, supervising, and retaining employees,
 13 and for ensuring they perform their duties consistent with rights under the laws and constitutions of
 14 this state and the United States.

15 (7) Courts can address frivolous lawsuits. Rules of civil procedure authorize judges to (A)
 16 Grant a motion to dismiss; and (B) To sanction an attorney who files a case to harass a defendant.

17 (8) Courts must be free to engage in fact finding to determine whether a government
 18 employee’s action violates a constitutional right. By making the government a defendant and the
 19 financially responsible party, the legislature wants to free courts to determine if an employee’s
 20 action violated the constitution: (A) Unencumbered by doctrines that impede fact finding, like the

21 federal doctrine of qualified immunity; and (B) Without the employee being exposed to personal
22 financial liability.

23 (b) Definitions:

24 (1) "Government" means state, county, municipal, and other political subdivision in this
25 state.

26 (2) "Government employee" means an individual employed or contracted by a government
27 employer.

28 (3) "Government employer" means an executive, legislative, or judicial agency,
29 department, board, commission, authority, institution, or instrumentality of the state or of a county,
30 municipality, or other political subdivision in this state.

31 (c) State Cause-of-Action:

32 (1) Under this chapter, the government employer shall be liable for an injury caused by an
33 act or omission of a government employee who, under color of law, violates a right under Article III
34 § 3-22 of the Constitution of West Virginia or the 2nd Amendment to the Constitution of the United
35 States, including rights against unreasonable searches and seizure of arms.

36 (2) An individual may seek legal, equitable, or other relief in a court of this state for a
37 violation of a right under the constitution of this state or the United States.

38 (3) The proper defendant in an action is the government employer and not a government
39 employee.

40 (4) A government employee shall not be found financially liable for a violation of a right
41 under the constitution of this state or the United States.

42 (5) The government employer shall notify the government employee, whose act or
43 omission is the subject of a claim under this chapter, within 10 days of the government employer
44 being served. The government employee has an unconditional right to intervene in the action, as a
45 third-party defendant, pursuant to this state's rules of civil procedure and court rules.

46 (6) The action is not subject to:

- 47 (A) Common law doctrines of immunity;
- 48 (B) Federally-recognized doctrines of qualified immunity;
- 49 (C) Sovereign immunity, governmental immunity, custom or policy; or
- 50 (D) Statutory immunities and limitations on liability or damages.

51 (7) Nothing in this chapter abrogates immunity for legislators at any level of government for
 52 actions taken in their legislative capacities.

53 (8) Notwithstanding this state's rules of civil procedure and court rules, a class action is
 54 prohibited under his chapter.

55 (9) A claim shall commence no later than three years from the date a claim can be brought
 56 for the deprivation of a right under the constitution of this state or the United States.

57 (10) The plaintiff bears the burden of proving, by a preponderance of the evidence, that the
 58 government employee violated a right under the constitution of this state or the United States.

§61-7C-2. Jurisdiction in state court; judicial process; attorney fees; termination of contract, agreement, or employment; and public information.

1 (a) Jurisdiction in state court:

2 (1) An action under this chapter arises out of state law.

3 (2) Jurisdiction is in this state's judicial system pursuant to this state's laws and rules of civil
 4 procedure.

5 (b) Judicial Process:

6 (1) The court's order shall be supported by findings of facts and conclusions of law. The
 7 court shall make the findings of fact in a bench trial and the jury shall make them in a jury trial. The
 8 court shall make conclusions of law.

9 (c) Attorney Fees:

10 (1) In any proceeding in which a plaintiff's claim prevails, the government shall be liable for
 11 reasonable attorney fees and other litigation costs.

12 (2) Reasonable attorney fees include those incurred on an hourly or contingency basis, or

13 by an attorney providing services on a pro bono basis.

14 (3) The court shall recognize that a plaintiff’s claim prevails if the plaintiff obtains any relief
15 the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement, or the
16 government’s voluntary change in behavior.

17 (4) Under this state’s rules of civil procedure, the court may dismiss a frivolous claim and
18 may award reasonable attorney fees and costs to the defendant for defending against a frivolous
19 claim.

20 (d) Termination of Contract, Agreement or Employment:

21 (1) For any contract or agreement enacted after the effective date of this legislation and
22 notwithstanding any other law, a court’s finding that a government employee violated a right under
23 the constitution of this state or the United States under this chapter is per se evidence that the
24 government employer has just cause for terminating the employment of the government
25 employee.

26 (2) The government’s termination of a contract, agreement or employment with the
27 government employee shall not affect the government’s liability under this chapter.

28 (e) Public information:

29 All documents, including complaints, judgments, settlements, and consent decrees, are
30 subject to public disclosure.

§61-7C-3. Severability; effective date.

1 (a) If any provision or clause of this article or its application to any person or circumstance
2 is held invalid, the invalidity does not affect other provisions or applications of this article which can
3 be given effect without the invalid provision or application, and to this end the provisions of this
4 article are severable.

5 (b) This bill shall become effective upon passage.

NOTE: The purpose of this bill is to create the Second Amendment Freedom and Enforcement (SAFE) 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.