

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4707

BY DELEGATES WILSON, STEELE, BIBBY, BARTLETT,
WAXMAN, JENNINGS, C. MARTIN, BUTLER, FOSTER, J.

JEFFRIES AND PHILLIPS

[Introduced February 05, 2020; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §4-1A-6 and §4-1A-8 of the Code of West Virginia, 1931, as
 2 amended, all relating to members of the Legislature; and clarifying that a legislator’s
 3 immunity from arrest and trial is subject to the language of the Constitution of West
 4 Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. LEGISLATIVE IMMUNITY.

§4-1A-6. Scope of legislative immunity generally.

1 (a) Legislative immunity, affording protection under the Separation of Powers Doctrine and
 2 the Speech or Debate privilege, extends to all of a legislator’s legislative acts, as defined in §4-
 3 1A-3 of this code.

4 (b) The Speech or Debate privilege, when it applies, is absolute and has two aspects:

5 (1) A member of the Legislature has immunity extending both to civil suits and criminal
 6 prosecutions for all actions within the legislative sphere: ~~even though the conduct, if performed in~~
 7 ~~other than a legislative context, would in itself be unconstitutional or otherwise contrary to criminal~~
 8 ~~or civil statutes~~ Provided, That this language is not intended in any way to amend or abrogate
 9 the provisions of Section 17, Article VI of the Constitution of West Virginia; and

10 (2) A member of the Legislature is provided a testimonial privilege that operates to protect
 11 those to whom it applies from being compelled to give testimony as to privileged matters and from
 12 being compelled to produce privileged documents.

§4-1A-8. Actions taken without lawful authority are not immune.

1 (a) Legislative immunity does not extend to activities by legislators that are without lawful
 2 authority under constitutional law, statutory law or rules of the Legislature, including, but not
 3 limited to, the following:

- 4 (1) Using an unconstitutional procedure to enact legislation;
- 5 (2) Conducting an illegal investigation or an unlawful search or seizure;
- 6 (3) Performing another otherwise valid legislative act without proper legislative authority;

7 (4) Filing a false or incomplete report, disclosure or claim regarding an otherwise valid
8 legislative act; ~~or~~

9 (5) Using legislative office for private gain in violation of the provisions of chapter six-B of
10 this code that define and enforce governmental ethics; or

11 (6) As stated in Section 17, Article VI of the Constitution of West Virginia, "Members of the
12 Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from
13 arrest during the session, and for ten days before and after the same; and for words spoken in
14 debate, or any report, motion or proposition made in either house, a member shall not be
15 questioned in any other place". Notwithstanding any other provision of this code to the contrary,
16 the language of the Constitution of West Virginia is the law of this state and may not be abrogated
17 or amended except by an amendment to the constitution approved by the voters of the state.

18 (b) This amendment shall be known as and may be cited as, "The Legislative Staff
19 Protection from Legislator Violence Act".

NOTE: The purpose of this bill is to clarify that a legislator's immunity from arrest and trial is subject to the language of the Constitution of West Virginia.

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