

HOUSE BILL NO. HB0133

Second Amendment Preservation Act-2.

Sponsored by: Representative(s) Wharff, Baker, Burt, Fortner, Hallinan, Heiner and Laursen and Senator(s) Bouchard, French, James, McKeown and Salazar

A BILL

for

1 AN ACT relating to protection of constitutional rights;
2 making legislative findings; prohibiting the enforcement of
3 unconstitutional federal actions that infringe upon law
4 abiding citizens' right to bear arms; denying immunity as
5 specified; providing for a civil action and civil damages;
6 providing definitions; specifying applicability; and
7 providing for an effective date.

8

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

10

11 **Section 1.**

12

13 (a) The legislature finds that:

14

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

8

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

16

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

1 is reserved to the states respectively or to the people
2 themselves;

3

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

8

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

1 powers granted in the constitution of the United States,
2 such supremacy does not extend to various federal statutes,
3 executive orders, administrative orders, court orders,
4 rules, regulations or other actions that collect data or
5 restrict or prohibit the manufacture, ownership and use of
6 firearms, firearm accessories or ammunition exclusively
7 within the borders of Wyoming. Rather, such statutes,
8 executive orders, administrative orders, court orders,
9 rules, regulations and other actions exceed the powers
10 granted to the federal government except to the extent they
11 are necessary and proper for governing and regulating the
12 armed forces of the United States or for organizing, arming
13 and disciplining militia forces actively employed in the
14 service of the armed forces of the United States;

15

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

1 state;

2

3 (vii) The people of the several states have also
4 granted congress the power "to lay and collect taxes,
5 duties, imports, and excises, to pay the debts, and provide
6 for the common defense and general welfare of the United
7 States" and "to make all laws which shall be necessary and
8 proper for carrying into execution the powers vested by the
9 constitution of the United States in the government of the
10 United States, or in any department or office thereof."
11 These constitutional provisions merely identify the means
12 by which the federal government may execute its limited
13 powers and shall not be construed to grant unlimited power
14 because to do so would be to destroy the carefully
15 constructed equilibrium between the federal and state
16 governments. Consequently, the legislature rejects any
17 claim that the taxing and spending powers of congress may
18 be used to diminish in any way the right of the people to
19 keep and bear arms;

20

21 (viii) The people of Wyoming have vested the
22 legislature with the authority to regulate the manufacture,
23 possession, exchange and use of firearms within the borders

1 of this state, subject only to the limits imposed by the
2 second amendment of the constitution of the United States
3 and the constitution of Wyoming; and

4

5 (ix) The legislature of the state of Wyoming
6 strongly promotes responsible gun ownership, including
7 parental supervision of minors in the proper use, storage,
8 and ownership of all firearms; the prompt reporting of
9 stolen firearms; and the proper enforcement of all state
10 gun laws. The legislature of the state of Wyoming hereby
11 condemns any unlawful transfer of firearms and the use of
12 any firearm in any criminal or unlawful activity.

13

14 (b) Nothing in this section shall be construed to
15 prohibit Wyoming officials from accepting aid from federal
16 officials in an effort to enforce Wyoming laws.

17

18 **Section 2.** W.S. 9-14-103 through 9-14-105 are created
19 to read:

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21 **9-14-103. Definitions.**

22

23 (a) As used in W.S. 9-14-103 through 9-14-105:

1

2 (i) "Law abiding citizen" shall not be construed
3 to include anyone who is not legally present in the United
4 States or the state of Wyoming. "Law abiding citizen"
5 means" a person who is not otherwise precluded under state
6 law from possessing a firearm and who has not or is not:

7

8 (A) Been convicted in any court of, a crime
9 punishable by imprisonment for a term exceeding one (1)
10 year;

11

12 (B) A fugitive from justice;

13

14 (C) An unlawful user of or addicted to any
15 controlled substance (as defined in section 102 of the
16 Controlled Substances Act (21 U.S.C. 802));

17

18 (D) Been adjudicated as a mental defective
19 or who has been committed to a mental institution;

20

21 (E) An alien who is illegally or unlawfully
22 in the United States; or has been admitted to the United
23 States under a nonimmigrant visa (as that term is defined

1 in section federal code section 101(a)(26) of the
2 Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

3

4 (F) Been discharged from the Armed Forces
5 under dishonorable conditions;

6

7 (G) Having been a citizen of the United
8 States, renounced his citizenship;

9

10 (H) Subject to a court order that:

11

12 (I) Was issued after a hearing of
13 which the person received actual notice, and at which the
14 person had an opportunity to participate;

15

16 (II) Restrains the person from
17 harassing, stalking or threatening an intimate partner of
18 the person or child of the intimate partner or person, or
19 engaging in other conduct that would place an intimate
20 partner in reasonable fear of bodily injury to the partner
21 or child; and

22

23 (III) Either:

1

2

(1) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or

5

6

(2) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

10

11

(J) Been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

17

18

(ii) "Material aid and support" shall include voluntarily giving or allowing others to make use of lodging, communications equipment or services, including social media accounts, facilities, weapons, personnel, transportation, clothing or other physical assets.

22

"Material aid and support" shall not include giving or

1 allowing the use of medicine or other materials necessary
2 to treat physical injuries, nor shall the term include any
3 assistance provided to help a person escape a serious,
4 present risk of life-threatening injury.

5

6 **9-14-104. Unconstitutional federal laws; protection**
7 **of law abiding citizens.**

8

9 (a) The following federal acts, laws, executive
10 orders, administrative orders, court orders, rules,
11 regulations, statutes or ordinances shall be considered
12 infringements on the people's right to keep and bear arms,
13 as guaranteed by the second amendment of the constitution
14 of the United States and article 1, section 24 of the
15 Wyoming constitution, within the borders of this state
16 including, but not limited to:

17

18 (i) Any new tax, levy, fee or stamp imposed on
19 firearms, firearm accessories or ammunition not common to
20 all other goods and services and reasonably expected to
21 create a chilling effect on the purchase or ownership of
22 those items by law abiding citizens;

23

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

3
4 (iii) Any registration or tracking of the
5 ownership of firearms, firearm accessories or ammunition;

6
7 (iv) Any act forbidding the possession,
8 ownership, use or transfer of a firearm, firearm accessory
9 or ammunition by law abiding citizens; or

10
11 (v) Any act ordering the confiscation of
12 firearms, firearm accessories or ammunition from law
13 abiding citizens.

14
15 (b) All federal acts, laws, executive orders,
16 administrative orders, court orders, rules, regulations,
17 statutes or ordinances identified in subsection (a) of this
18 section, regardless of whether enacted before or after this
19 section, that infringe on the law abiding citizen's right
20 to keep and bear arms as guaranteed by the second amendment
21 of the constitution of the United States and article 1,
22 section 24 of the Wyoming constitution shall be invalid in
23 this state, shall be specifically rejected by this state

1 and shall be considered null, void and of no effect in this
2 state.

3

4 (c) It shall be the duty of the courts and law
5 enforcement agencies of this state to protect the rights of
6 law abiding citizens to keep and bear arms within the
7 borders of this state and to protect these rights from the
8 infringements defined under subsection (a) of this section.

9

10 (d) Nothing in this section shall be construed to
11 prohibit Wyoming officials from accepting aid from federal
12 officials in an effort to enforce Wyoming laws.

13

14 **9-14-105. Prohibition on enforcement of**
15 **unconstitutional federal laws; liability; civil damages.**

16

17 (a) No entity or person, including any public officer
18 or employee of this state or any political subdivision of
19 this state, shall have the authority to enforce or attempt
20 to enforce or to give material aid and support to another
21 who enforces or attempts to enforce any federal acts, laws,
22 executive orders, administrative orders, court orders,
23 rules, regulations, statutes or ordinances infringing on

1 the right of law abiding citizens to keep and bear arms as
2 identified in W.S. 9-14-104(a).

3

4 (b) Any political subdivision of the state or law
5 enforcement agency that acts knowingly to violate the
6 provisions of subsection (a) of this section or otherwise
7 knowingly deprives a resident of Wyoming of the rights or
8 privileges ensured by the second amendment of the
9 constitution of the United States or article 1, section 24
10 of the Wyoming constitution, while acting under the color
11 of any state or federal law, shall be liable to the injured
12 party in an action at law, suit in equity, declaratory
13 judgment or other proper proceeding for redress and shall
14 be subject to a civil penalty of not less than fifty
15 thousand dollars (\$50,000.00) per violation. In such
16 actions:

17

18 (i) Any person who is aggrieved by a violation
19 of this section shall have standing to pursue an action in
20 the district court of the county in which the action
21 allegedly occurred;

22

1 (ii) Any person injured under this section shall
2 have standing to pursue an action for injunctive relief in
3 the district court of the county in which the action
4 allegedly occurred with respect to the actions of the
5 individual. The court shall hold a hearing on the motion
6 for temporary restraining order and preliminary injunction
7 within thirty (30) days of service of the petition. In such
8 actions, the court may award the prevailing party, other
9 than the state of Wyoming or any political subdivision of
10 the state reasonable attorney's fees and costs;

11

12 (iii) If a court imposes a civil penalty,
13 attorney's fees and costs, or both civil damages and fees
14 and costs, then the state, political subdivision or law
15 enforcement agency that employs the person who violated
16 subsection (a) of this section shall be required to pay any
17 civil penalty, fees and costs that the court orders;

18

19 (iv) The state, political subdivision or law
20 enforcement agency that employs the person who acted
21 knowingly to violate the provisions of subsection (a) of
22 this section shall not be granted immunity under W.S.
23 1-39-104(a).

1

2 (c) Nothing in this section shall limit the authority
3 or discretion of a public officer or an employee of this
4 state or any political subdivision of this state to
5 investigate, charge or prosecute any person for felonies
6 that do not constitute the infringements described under
7 W.S. 9-14-104(a) and subsection (a) of this section.

8

9 (d) It shall not be considered a violation of this
10 section to provide material aid to federal officials who
11 are in pursuit of a suspect when there is a demonstrable
12 criminal nexus with another state or country and the
13 suspect is either not a citizen of this state or is not
14 present in this state. It shall not be considered a
15 violation of this section to provide material aid to
16 federal prosecution for:

17

18 (i) Felony crimes against a person when the
19 federal prosecution includes weapons violations
20 substantially similar to those found in title 6, chapter 8
21 or chapter 2 or title 35, chapter 7, article 10 so long as
22 the weapons violations are merely ancillary to the
23 prosecution; or

1

2 (ii) Felony violations substantially similar to
3 those found in title 6, chapter 2 or title 35, chapter 7,
4 article 10 when the prosecution includes weapons violations
5 substantially similar to those found in Wyoming law so long
6 as the weapons violations are merely ancillary to the
7 prosecution.

8

9 (e) Nothing in this section shall be construed to
10 prohibit Wyoming officials from accepting aid from federal
11 officials in an effort to enforce Wyoming laws.

12

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

14

15 **1-39-104. Granting immunity from tort liability;**
16 **liability on contracts; exceptions.**

17

18 (a) A governmental entity and its public employees
19 while acting within the scope of duties are granted
20 immunity from liability for any tort except as provided by
21 W.S. 1-39-105 through 1-39-112 and 9-14-105(b)(iv). Any
22 immunity in actions based on a contract entered into by a
23 governmental entity is waived except to the extent provided

1 by the contract if the contract was within the powers
2 granted to the entity and was properly executed and except
3 as provided in W.S. 1-39-120(b). The claims procedures of
4 W.S. 1-39-113 apply to contractual claims against
5 governmental entities.

6

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

11

12

(END)