WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 184

By Senators Martin, Phillips, Karnes, Hunt, Rucker, Maynard, and Maroney

[Introduced January 13, 2023; referred
to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-7-10a, relating to declaring the sale, repair, maintenance, and manufacture of firearms, ammunition, and related accessories and components, to be essential businesses and services for the purposes of safety and security in times of declared emergency or any other statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or other emergencies; prohibiting specific governmental regulation of firearms, ammunition, components or accessories of any kind or nature, or their use or possession; extending the expiration date of concealed license during emergencies; creating an action for damages, injunctive relief, declaratory relief, or other appropriate redress for the unlawful seizure or confiscation of firearms or related accessories and components; and providing for civil damages.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-10a. Transport storage, transfer sale, manufacture, etc. of firearms declared essential businesses and services.

(a) Notwithstanding any other provision of law to the contrary, the transport, storage, transfer, sale, commerce in, import and export of, distribution, repair, maintenance, and manufacture of firearms, ammunition, and related accessories and components, and other goods and services directly related to lawful firearm possession, use, storage, repair, maintenance, and training in the use of firearms, are declared to be "essential" businesses and services for the purposes of safety and security in times of declared emergency or any other statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or emergencies of whatever kind or nature.

(b) Except as provided in this section, no state agency, political subdivision, or any elected or appointed official or employee of this state or of a political subdivision may, under any governmental authority or color of law exercised as part of any statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or emergencies of whatever kind or nature:

(1) Prohibit, regulate, or curtail the otherwise lawful possession, carrying, display, sale, transportation, transfer, defensive use, or other lawful use of any:

(A) Firearm, including any component or accessory;

(B) Ammunition, including any component or accessory;

(C) Ammunition-reloading equipment and supplies; or

(D) Personal weapons other than firearms;

(2) Require registration of a firearm, including any component or accessory, or ammunition for which registration is not otherwise required by state law;

(3) Seize, commandeer, or confiscate in any manner, any:

(A) Firearm, including any component or accessory;

(B) Ammunition, including any component or accessory;

(C) Ammunition-reloading equipment and supplies; or

(D) Personal weapons other than firearms;

(4) Suspend or revoke a concealed handgun license issued pursuant to §61-7-4 of this code except as expressly authorized in §61-7-5 of this code;

(5) Refuse to accept an application for a license to carry a concealed handgun, including a renewal application, provided the application has been properly completed in accordance with §61-7-4 of this code;

(6) Close or limit the operation of any entity engaged in the lawful selling or servicing of any firearm, including any component or accessory, ammunition, including any component or accessory, ammunition-reloading equipment and supplies, or personal weapons other than firearms, unless the closing or limitation applies equally to all forms of commerce within the jurisdiction;

(7) Close or limit the operation of any indoor or outdoor shooting range, or any entity engaged in providing firearms safety training or firearms safety instructor courses, classes, or programs, unless the closing or limitation applies equally to all forms of commerce within the jurisdiction;

(8) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any:

(A) Firearm, including any component or accessory;

(B) Ammunition, including any component or accessory;

(C) Ammunition-reloading equipment and supplies; or

(D) Personal weapons other than firearms; or,

(9) Suspend, restrict, or prohibit otherwise lawful hunting or fishing activities, unless the suspension, restriction or prohibition is consistent with travel restrictions or restrictions on public access to state lands or waters that apply equally to other travel or public access to state lands or waters within the jurisdiction.

(c)(1) If a concealed handgun license has been issued to a person pursuant to §61-7-4 of this code and if the date that the valid and subsisting license would or is scheduled to expire falls within the period of emergency declared by the Governor's executive order or the 14 days immediately preceding that declaration, then, notwithstanding the date of scheduled expiration, the duration of that license is automatically extended for a period of 60 days commencing from the date of the license’s scheduled expiration or 30 days commencing from the termination of the state of emergency, whichever is later.

(2) If subdivision (c)(1) of this section applies with respect to a concealed handgun license, during the extension period described in that section that is applicable to that license, all of the following apply:

(A) The license shall be valid for all purposes under the laws of this state and the person to whom the license was issued shall be considered for all purposes under the laws of this state to be the holder of a valid license to carry a concealed handgun;

(B) The license remains subject to the operation of §61-7-1 *et seq.* of this code during the extended period of the license and at any other time; and

(C) Except for the date of scheduled expiration, all other conditions, and restrictions otherwise applicable to the license and the license holder continue to apply during the extended period of the license and at any other time.

(D) This section may not apply to the following:

(i) The authority of a chief administrative officer of a political subdivision with police powers, when engaged in suppressing a riot or when there is a clear and present danger of a riot, to prohibit the sale, offering for sale, dispensing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to, or from a cordoned-off area;

(ii) The ability of a law-enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority. A law-enforcement officer who is acting in the lawful discharge of the officer's official duties without a warrant may disarm a lawfully detained individual only temporarily and only if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. Before releasing the individual, the law-enforcement officer shall return to the individual any seized firearms and ammunition, and components thereof, any firearms accessories and ammunition reloading equipment and supplies, and any other personal weapons taken from the individual, unless the officer takes the individual into physical custody for engaging in criminal activity or for observation, or seizes the items as evidence pursuant to an investigation for the commission of the crime for which the individual was arrested; or

(iii) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same geographic area and does not result in a de facto prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for commercial, retail, or industrial uses.

(E)(i) A person, group, or entity adversely affected by any manner of law, ordinance, rule, regulation, resolution, practice, or other action enacted or enforced in violation of this section may file an action for damages, injunctive relief, declaratory relief, or other appropriate redress in the court having jurisdiction over the county in which the aggrieved person resides, or group or entity is located, or in which the violation occurred.

(ii) In addition to any actual damages awarded against the state agency, political subdivision, or any elected or appointed official or employee of this state or of a political subdivision, and other relief provided with respect to such an action, the court shall award reasonable court costs and expenses, including attorney's fees, to any person, group, or entity that brings the action, regardless of whether the law, ordinance, rule, regulation, resolution, practice, or action or the manner of its enforcement is repealed or rescinded or expires after the civil action was filed but prior to a final court determination of the action.

(iii) In addition to any other remedy available at law or in equity, a person, group, or entity aggrieved by the seizure or confiscation of an item listed in paragraph (E)(i) of this section, in violation of this section, may make application for the immediate return of the items to the office of the clerk of the circuit court for the county in which the items were seized and, except as provided in paragraph (D)(ii) of this section, the court shall order the immediate return of the items by the seizing or confiscating governmental office and that office's employed officials.

(iv) A person, group, or entity aggrieved by the seizure or confiscation of an item listed in paragraph (E)(i) of this section, in violation of this section, may also be entitled to recover a civil penalty for damages, in the amount of $5,000 per violation, against a person who violates the seizure or confiscation restrictions in this section.

NOTE: The purpose of this bill is to declare the sale, repair, maintenance, and manufacture of firearms, ammunition, and related accessories and components, etc. to be "essential" businesses and services for the purposes of safety and security in times of declared emergency or any other statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or other emergencies. The bill prohibits certain specific governmental regulation of firearms, ammunition, components or accessories of any kind, or their use or possession. The bill creates an action for damages, injunctive relief, declaratory relief, or other appropriate redress for the unlawful seizure or confiscation of firearms or related accessories and components; and provides for civil damages.

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