

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 458

BY SENATORS PHILLIPS, SMITH, KARNES, RUCKER,

GRADY, ROBERTS, AZINGER, AND WOODRUM

[Introduced February 25, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended, relating
 2 to modifying the power of the state government regarding the possession of firearms by
 3 individuals during a declared state of emergency.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
 MANAGEMENT.**

§15-5-6. Emergency powers of Governor.

1 (a) The provisions of this section are operative only during the existence of a state of
 2 emergency or state of preparedness. The existence of a state of emergency or state of
 3 preparedness may be proclaimed by the Governor or by concurrent resolution of the Legislature
 4 if the Governor in the proclamation, or the Legislature in the resolution, finds that an attack upon
 5 the United States has occurred or is anticipated in the immediate future, or that a natural or man-
 6 made disaster of major proportions has actually occurred or is imminent within the state, or that
 7 an emergency exists or may be imminent due to a large-scale threat beyond local control, and
 8 that the safety and welfare of the inhabitants of this state require an invocation of the provisions
 9 of this section.

10 (b) Any state of emergency or state of preparedness, whether proclaimed by the Governor
 11 or by the Legislature, terminates upon the proclamation of the termination by the Governor, or the
 12 passage by the Legislature of a concurrent resolution terminating the state of emergency or state
 13 of preparedness: *Provided*, That in no case shall a state of preparedness last longer than thirty
 14 days.

15 (c) So long as a state of emergency or state of preparedness exists, the Governor has
 16 and may exercise the following additional emergency powers:

17 (1) To enforce all laws and rules relating to the provision of emergency services and to
 18 assume direct operational control of any or all emergency service forces and helpers in the state;

19 (2) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to
20 emergency services on terms and conditions he or she prescribes and without regard to the
21 limitations of any existing law and to account to the State Treasurer for any funds received for the
22 property;

23 (3) To procure materials and facilities for emergency services by purchase, condemnation
24 under the provisions of chapter fifty-four of this code or seizure pending institution of
25 condemnation proceedings within thirty days from the seizing thereof and to construct, lease,
26 transport, store, maintain, renovate or distribute the materials and facilities. Compensation for
27 property so procured shall be made in the manner provided in chapter fifty-four of this code;

28 (4) To obtain the services of necessary personnel, required during the emergency, and to
29 compensate them for their services from his or her contingent funds or other funds available to
30 him or her;

31 (5) To provide and compel the evacuation of all or part of the population from any stricken
32 or threatened area within the state and to take steps that are necessary for the receipt and care
33 of the evacuees;

34 (6) To control ingress and egress to and from a disaster area or an area where large-scale
35 threat exists, the movement of persons within the area and the occupancy of premises therein;

36 (7) To suspend the provisions of any regulatory statute prescribing the procedures for
37 conduct of state business or the orders, rules of any state agency, if strict compliance therewith
38 would in any way prevent, hinder or delay necessary action in coping with the emergency;

39 (8) To use available resources of the state and of its political subdivisions that are
40 reasonably necessary to cope with the emergency;

41 (9) To suspend or limit the sale, dispensing or transportation of alcoholic beverages,
42 explosives and combustibles, not including firearms ammunition, firearms ammunition
43 components, or ammunition-reloading equipment and supplies;

44 (10) To make provision for the availability and use of temporary emergency housing; and

45 (11) To perform and exercise other functions, powers and duties that are necessary to
46 promote and secure the safety and protection of the civilian population.

47 (d) The declaration of a state of preparedness has the same effect as a declaration of a
48 state of emergency for the purposes of the Emergency Management Assistance Compact
49 established in section twenty-two of this article and the Statewide Mutual Aid Systems set forth in
50 section twenty-eight of this article.

51 (e) The powers granted under this section do not authorize any action that would violate
52 the prohibitions of section nineteen-a of this article.

§15-5-19a. Possession of firearms during a declared state of emergency.

1 (a) ~~No person acting on behalf or under the authority of the state or a political subdivision~~
2 ~~of the state may do any of the following during any federal or state declared state of emergency~~
3 No state agency, political subdivision, or any elected or appointed official or employee of this state
4 or of a political subdivision may, under any governmental authority or color of law, including any
5 other statutorily authorized responses to disaster, war, acts of terrorism, or emergencies of
6 whatever kind or nature:

7 (1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer,
8 transportation, storage, ~~sale,~~ ~~or~~ display, or other lawful use of a firearm or ammunition, any firearm
9 or ammunition component or accessory, ammunition-reloading equipment and supplies, or
10 personal weapons other than firearms;

11 (2) Seize, confiscate, or authorize the seizure or confiscation of any otherwise lawfully-
12 possessed firearm or ammunition, any firearm or ammunition component or accessory,
13 ammunition-reloading equipment and supplies, or personal weapons other than firearms unless:

14 (A) The person acting on behalf of or under the authority of the state or political subdivision
15 is:

16 (i) Defending himself or another from an assault; or,

17 (ii) Arresting a person in actual possession of a firearm or ammunition for a violation of

18 law; or,

19 (B) The firearm or ammunition is being seized or confiscated as evidence of a crime; or,

20 (3) Require registration of any firearm or ammunition, any firearm or ammunition
21 component or accessory, ammunition-reloading equipment and supplies, or personal weapons
22 other than firearms;

23 (4) Suspend or revoke a license to carry a concealed deadly weapon or provisional license
24 to carry a concealed deadly weapon issued pursuant to §61-7-1 et seq. of this code except as
25 expressly authorized in that article;

26 (5) Refuse to accept an application for a license to carry a concealed deadly weapon or
27 provisional license to carry a concealed deadly weapon, provided the application has been
28 properly completed in accordance with §61-7-1 et seq. of this code;

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

34 (7) Close or limit the operating hours of any indoor or outdoor shooting range;

35 (8) Place restrictions or quantity limitations on any entity regarding the lawful sale or
36 servicing of any firearm or ammunition, any firearm or ammunition component or accessory,
37 ammunition-reloading equipment and supplies, or personal weapons other than firearms.

38 ~~(b) The prohibitions of subsection (a)(1) do not prohibit the state or an authorized state~~
39 ~~or local authority from ordering and enforcing an evacuation or general closure of businesses in~~
40 ~~the affected area during a declared state of emergency~~

41 ~~(e)~~(b) Any individual ~~aggrieved~~ adversely affected by a violation of this section may seek
42 relief in an action at law or in equity for redress against any ~~person~~ state agency, political
43 subdivision, or any elected or appointed official or employee of this state or of a political

44 subdivision who subjects such individual, or causes such individual to be subjected, to an action
45 prohibited by this section.

46 ~~(d)~~(c) In addition to any other remedy at law or in equity, an individual ~~aggrieved~~ adversely
47 affected by the seizure or confiscation of a firearm or ammunition in violation of this section may
48 bring an action for the return of such firearm or ammunition in the circuit court of the county in
49 which that individual resides or in which such firearm or ammunition is located.

50 (d) A person is "adversely affected" for purposes of subsection (b) of this section if either
51 of the following applies:

52 (1) The person is an individual who meets all of the following requirements:

53 (A) The individual lawfully resides within the United States.

54 (B) The individual may legally possess a firearm under the laws of West Virginia.

55 (C) The individual is or was subject to the action, ordinance, measure, enactment, rule, or
56 policy of the state agency, political subdivision, or any elected or appointed official or employee
57 of this state or of a political subdivision that is the subject of an action filed under subsection (b).
58 An individual is or was subject to the action, ordinance, measure, enactment, rule, or policy of the
59 political subdivision if the individual is or was physically present within the boundaries of the
60 political subdivision for any reason.

61 (2) The person is a membership organization that:

62 (A) Includes two (2) or more individuals described in subdivision (1); and

63 (B) Is dedicated in whole or in part to protecting the rights of persons who possess, own,
64 or use firearms for competitive, sporting, defensive, or other lawful purposes.

65 ~~(e) In any action or proceeding to enforce this section, the court shall award a prevailing~~
66 ~~plaintiff costs and reasonable attorney fees~~ A prevailing plaintiff in an action under this section is
67 entitled to recover from the defendant the following:

68 (1) The greater of the following:

69 (A) Actual damages, including consequential damages.

- 70 (B) Liquidated damages of three (3) times the plaintiff's attorney's fees.
- 71 (2) Court costs (including fees).
- 72 (3) Reasonable attorney's fees.

NOTE: The purpose of this bill is to modify the authority of the state government for the individual possession of firearms during a declared state of emergency.

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