

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 458

BY SENATORS PHILLIPS, SMITH, KARNES, RUCKER,
GRADY, ROBERTS, AZINGER, WOODRUM, AND MAYNARD

[Originating in the Committee on the Judiciary;
reported on March 24, 2021]

1 A BILL to amend and reenact §15-5-9a of the Code of West Virginia, 1931, as amended, relating
2 to modifying and limiting the power of government entities regarding the possession of
3 firearms and related products by individuals during a declared state of emergency; and
4 allowing prevailing plaintiff to recover actual damages, court costs and fees, and attorney's
5 fees.

Be it enacted by the Legislature of West Virginia:

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

§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 (a) During a federally or state declared state of emergency, no state agency, county, or
4 municipality or any elected or appointed official or employee thereof may not:

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

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

13 (A) The person acting on behalf of or under the authority of the state, ~~or political~~
14 ~~subdivision~~ a county, or municipality is:

15 (i) Defending himself or herself or another from an assault; or

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

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

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

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

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

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

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

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

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

40 (c) Any individual ~~aggrieved~~ adversely affected by a violation of this section may seek
41 relief in an action at law or in equity for redress against any ~~person~~ state agency, county,

42 municipality, or any elected or appointed official or employee of this state, a county, or municipality
43 ~~who that~~ subjects ~~such the~~ individual, or causes ~~such the~~ individual to be subjected, to an action
44 prohibited by this section.

45 (d) In addition to any other remedy at law or in equity, an individual ~~aggrieved~~ adversely
46 affected by the seizure or confiscation of ~~a firearm or ammunition~~ any firearm or ammunition
47 component or accessory, ammunition reloading equipment and supplies, or otherwise lawful
48 personal weapons other than firearms in violation of this section may bring an action for the return
49 of ~~such firearm or ammunition~~ the seized or confiscated property in the circuit court of the county
50 in which that individual resides or in which ~~such firearm or ammunition~~ the seized or confiscated
51 property is located.

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

- 55 (1) Actual damages, including consequential damages;
56 (2) Court costs and fees; and
57 (3) Reasonable attorney's fees.