

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 458

BY SENATORS PHILLIPS, SMITH, KARNES, RUCKER,

GRADY, ROBERTS, AZINGER, WOODRUM, AND MAYNARD

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]

1 AN ACT to amend and reenact §15-5-19a of the Code of West Virginia, 1931, as amended,
2 relating to modifying and limiting the power of government entities regarding the
3 possession of firearms and related products by individuals during a declared state of
4 emergency; and allowing prevailing plaintiff to recover actual damages, court costs and
5 fees, and attorney's 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) During a federal or state declared state of emergency, no state agency, county, or
2 municipality, or any elected or appointed official or employee thereof, may:

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

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

11 (A) The person acting on behalf of or under the authority of the state, a county, or
12 municipality is:

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

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

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

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

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

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

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

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

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

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

37 (c) Any individual adversely affected by a violation of this section may seek relief in an
38 action at law or in equity for redress against any state agency, county, municipality, or any elected
39 or appointed official or employee of this state, a county, or municipality that subjects the individual,
40 or causes the individual to be subjected, to an action prohibited by this section.

41 (d) In addition to any other remedy at law or in equity, an individual adversely affected by
42 the seizure or confiscation of any firearm or ammunition component or accessory, ammunition

43 reloading equipment and supplies, or otherwise lawful personal weapons other than firearms in
44 violation of this section may bring an action for the return of the seized or confiscated property in
45 the circuit court of the county in which that individual resides or in which the seized or confiscated
46 property is located.

47 (e) A prevailing plaintiff in an action under this section is entitled to recover the following:

48 (1) Actual damages, including consequential damages;

49 (2) Court costs and fees; and

50 (3) Reasonable attorney's fees.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor