

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 190

BY SENATORS MARTIN, PHILLIPS, WOODRUM, KARNES,

AND SMITH

[Introduced January 12, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-7-10a, relating to declaring the sale, repair, maintenance, and
3 manufacture of firearms, ammunition, and related accessories and components to be
4 essential businesses and services for the purposes of safety and security in times of
5 declared emergency or any other statutorily authorized responses to disaster, war, acts of
6 terrorism, riot or civil disorder, or other emergencies; prohibiting specific governmental
7 regulation of firearms, ammunition, components or accessories of any kind or nature, or
8 their use or possession; extending the expiration date of concealed license during
9 emergencies; creating an action for damages, injunctive relief, declaratory relief, or other
10 appropriate redress for the unlawful seizure or confiscation of firearms or related
11 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.

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

9 (b) Except as provided in this section, no state agency, political subdivision, or any elected
10 or appointed official or employee of this state or of a political subdivision may, under any
11 governmental authority or color of law exercised as part of any statutorily authorized responses

12 to disaster, war, acts of terrorism, riot or civil disorder, or emergencies of whatever kind or nature:

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

15 (A) Firearm, including any component or accessory;

16 (B) Ammunition, including any component or accessory;

17 (C) Ammunition-reloading equipment and supplies; or

18 (D) Personal weapons other than firearms;

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

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

22 (A) Firearm, including any component or accessory;

23 (B) Ammunition, including any component or accessory;

24 (C) Ammunition-reloading equipment and supplies; or

25 (D) Personal weapons other than firearms;

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

28 (5) Refuse to accept an application for a license to carry a concealed handgun, including
29 a renewal application, provided the application has been properly completed in accordance with
30 §61-7-4 of this code;

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

36 (7) Close or limit the operation of any indoor or outdoor shooting range, or any entity
37 engaged in providing firearms safety training or firearms safety instructor courses, classes, or

38 programs, unless the closing or limitation applies equally to all forms of commerce within the
39 jurisdiction;

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

42 (A) Firearm, including any component or accessory;

43 (B) Ammunition, including any component or accessory;

44 (C) Ammunition-reloading equipment and supplies; or

45 (D) Personal weapons other than firearms; or,

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

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

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

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

63 (B) The license remains subject to the operation of §61-7-1 et seq. of this code during the

64 extended period of the license and at any other time; and

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

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

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

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

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

90 commercial, retail, or industrial uses.

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

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

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

109 (iv) A person, group, or entity aggrieved by the seizure or confiscation of an item listed in
110 paragraph (E)(i) of this section, in violation of this section, may also be entitled to recover a civil
111 penalty for damages, in the amount of \$5,000 per violation, against a person who violates the
112 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.