

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 602

BY SENATORS MAYNARD AND RUCKER

[Introduced February 09, 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 article,
 2 designated §55-20-1 and §55-20-2, all relating to denying a nuisance action for damages
 3 against a sports or exposition venue operation; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 20. IMMUNITY FROM NUISANCE ACTION FOR DAMAGES AGAINST
 SPORTS OR EXPOSITION VENUE OPERATION.**

§55-20-1. Definitions.

1 For purposes of this article:
 2 “Sports or exposition venue” means a venue where competitive sporting events occur
 3 involving motorized vehicles, whether for racing or non-racing competition, or competitive athletic
 4 events, and includes, but is not limited to, large public exhibitions of art or trade goods, trade fairs,
 5 display shows, presentation, and demonstration exhibits, and includes its owners, agents,
 6 employees, or contractors primarily involving motorized vehicles, whether for racing or nonracing
 7 competition, and includes its owners, agents, employees, or contractors.

§55-20-2. Nuisance action for damages may not be brought.

1 (a) A person may not file a nuisance action to recover damages in which an event at a
 2 sports or exposition venue is alleged to be a public or private nuisance unless:
 3 (1) He or she is the majority legal land owner;
 4 (2) He or she owns property adversely affected by a competitive sporting events; and
 5 (3) The sporting or exposition event has materially violated a federal, state, or local law.
 6 (b) No sports or exposition venue operation within this state which has been in operation
 7 for a period of more than one year may be considered a nuisance, either public or private, as the
 8 result of a changed condition in or about the locality where the sports or exposition venue
 9 operation is located. In any nuisance action, public or private, against a sports or exposition venue
 10 operation or its principals or employees’ proof that the sports or exposition venue operation has

11 existed for one year or more is an absolute defense to the nuisance action, if the operation is in
12 compliance with all applicable state and local laws, regulations, and permits.

13 (c) No state or local agency may bring a criminal or civil action against a sports or
14 exposition venue operation for an activity that is in material compliance with all applicable state
15 and local laws, regulations, and permits.

16 (d) No sports or exposition venue operation may be or become a private or public nuisance
17 if the operators are conducting the sports or exposition venue operation in a manner consistent
18 with commonly accepted practice. If the operation is in material compliance with all applicable
19 state and local laws, regulations, and permits, it shall be presumed to be conducted in a manner
20 consistent with commonly accepted sports or exposition venue operations.

21 (e) No sports or exposition venue operation may be considered a nuisance, private or
22 public, if the sports or exposition venue operation makes a reasonable expansion, so long as the
23 operation is in material compliance with all applicable state and federal laws, regulations, and
24 permits.

25 (1) For the purpose of this section, a reasonable expansion includes, but is not limited to:

26 (A) Transfer of the sports or exposition venue operation;

27 (B) Purchase of additional land for the sports or exposition venue operation;

28 (C) Introducing technology to an existing sports or exposition venue operation including,
29 but not limited to, new activities, practices, equipment, and procedures consistent with
30 technological development within the sports or exposition venue industry; or

31 (D) Any other change that is related and applied to an existing sports or exposition venue
32 operation, so long as the change does not affect the sports or exposition venue operation's
33 compliance with applicable state and federal laws, regulations, and permits.

34 (2) The reasonable expansion exemption provided by this subsection cannot apply to an
35 expansion that:

36 (A) Creates a substantially adverse effect upon the environment; or

37 (B) Creates a hazard to public health and safety.

38 (f) If a sports or exposition venue operation situated outside of a municipality's corporate
39 boundaries is subsequently annexed or otherwise brought within the municipality's corporate
40 boundaries of a municipality, the requirements of the municipality do not apply to the sports or
41 exposition venue operation.

42 (g) A sports or exposition venue operation is not, nor may it become, a private or public
43 nuisance after it has been in operation for more than one year, if the operation was not a nuisance
44 at the time the operation began, and the conditions or circumstances complained of as
45 constituting the basis for the nuisance action exist substantially unchanged since the established
46 date of operation. The established date of operation is the date on which a sports or exposition
47 venue operation commenced.

48 (h) The provisions of this section may not apply in any of the following circumstances:

49 (1) Whenever a nuisance results from the negligent operation of any such sports or
50 exposition venue operation; or

51 (2) To affect or defeat the right of any person to recover for injuries or damages sustained
52 because of a sports or exposition venue operation or portion of a sports venue operation that is
53 conducted in violation of a federal, state, or local statute, regulation, ordinance, or governmental
54 requirement that applies to the motor sports or exposition venue operation.

55 (i) The protected status of a sports or exposition venue operation, once acquired, is
56 assignable, alienable, and inheritable. The protected status of a sports or exposition venue
57 operation, once acquired, may not be waived by the temporary cessation of operations or by
58 diminishing the size of the operation.

NOTE: The purpose of this bill is to deny a nuisance action for damages against a sports or exposition venue operation. The bill provides exceptions to denial.

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