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With a Stroke of a Pen, PA Governor Wolf Limits Firearm Rights by Proclaiming State of Emergency

Today, Pennsylvania Governor Wolf issued a proclamation declaring Pennsylvania's heroin and opioid epidemic a statewide disaster emergency, seemingly triggering the firearm prohibitions found in 18 Pa.C.S. § 6107 during declared emergencies.

Specifically, Section 6107 provides:

(a) General rule.—No person shall carry a firearm upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

- (1) Actively engaged in a defense of that person's life or property from peril or threat.
- (2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

(b) Seizure, taking and confiscation.—Except as otherwise provided under subsection (a) and notwithstanding the provisions of 35 Pa.C.S. Ch. 73 (relating to Commonwealth services) or any other provision of law to the contrary, no firearm, accessory or ammunition may be seized, taken or confiscated during an emergency unless the seizure, taking or confiscation would be authorized absent the emergency.

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Accessory.” Any scope, sight, bipod, sling, light, magazine, clip or other related item that is attached to or necessary for the operation of a firearm.

“Firearm.” The term includes any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any weapon.

(It must be noted that the definition of a firearm is specific to this section of the code and not the general definition of a firearm found in Section 6102. The definition of a firearm in this section is far more broad than the definition in Section 6102)

While neither Section 6102 nor Section 6107 define what constitutes an “emergency proclaimed by a State...governmental executive,” it is clear that Governor Wolf is the state governmental executive. Moreover, the language utilized in the proclamation seems to trigger the prohibition since it is a proclamation of an emergency, pursuant to 35 Pa.C.S. § 7301.

Specifically, the Proclamation provides:



PROCLAMATION

PROCLAMATION OF DISASTER EMERGENCY

January 10, 2018

WHEREAS, the opioid crisis is of such magnitude or severity that emergency action is necessary to protect the health, safety, and welfare of affected citizens in Pennsylvania;

WHEREAS, the opioid crisis is a public health emergency in Pennsylvania contributing to addiction, overdose emergencies, and deaths; and

WHEREAS, the opioid crisis includes heroin and prescription pain medications, such as morphine, codeine, methadone, oxycodone, hydrocodone, fentanyl, and hydromorphone; and

WHEREAS, Pennsylvania's opioid crisis impacts all areas of the state - including urban, suburban, and rural communities and all ages including both young people and older Pennsylvanians - and is unprejudiced in its reach and devastation; and

WHEREAS, the deaths because of overdoses are preventable and the effective treatment of opioid use disorders can reduce the risk of overdose; and

WHEREAS, the Drug Enforcement Agency reports the total number of fatal drug overdoses in Pennsylvania in 2016 was 4,642, a 3.7% increase from 2015 and those deaths increasingly are the result of fentanyl and other synthetic opioid compounds; and

WHEREAS, Pennsylvania's rate of drug overdose is 36.5 per 100,000 which is significantly higher than the national average of 16.3 per 100,000; and

WHEREAS, the Prescription Drug Monitoring Program reports the number of emergency department visits related to an opioid overdose have increased by 82% from the third quarter of 2016 to the third quarter of 2017;

WHEREAS, the Governor and the Acting Secretary of Health have reasonable cause to believe that disease, illness, and health conditions, including death, are being caused by the opioid crisis;

WHEREAS, it is necessary to make Naloxone more widely available to treat narcotic overdose in emergency situations;

WHEREAS, it is necessary to expand access to treatment facilities, as well as treatment options across the Commonwealth; and

WHEREAS, it is necessary to temporarily reduce regulatory burdens, in accordance with federal and state law, to ensure that individuals receive needed treatment without delay;

FURTHER, I direct the establishment of an Opioid Unified Coordination Group that shall utilize the National Incident Management System (NIMS) to provide a consistent framework and approach to enable government to work together to prepare for, prevent, respond to, recover from, and mitigate the effects of the opioid crisis in Pennsylvania. The Opioid Unified Coordination Group shall consist of the heads of the following Commonwealth agencies, or their designees, and such other executive branch agencies as the Governor may designate:

- (a) The Department of Health*
- (b) The Department of Human Services*
- (c) The Department of Drug and Alcohol Programs*
- (d) The Pennsylvania Emergency Management Agency*
- (e) The Pennsylvania Commission on Crime and Delinquency*
- (f) The Pennsylvania State Police*

FURTHER, the Opioid Unified Coordination Group shall establish a Public Health Emergency Command Center (Command Center) that will operate within the Commonwealth Response Coordination Center (CRCC) located at the Pennsylvania Emergency Management Agency.

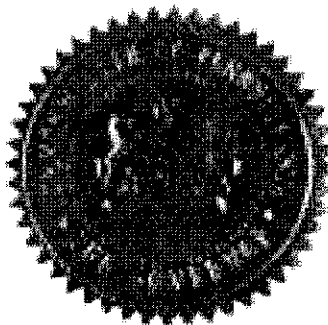
FURTHER, during the period of this emergency, recognizing the need for urgent and expeditious action, pursuant to 35 Pa.C.S. § 7301(f), I do hereby authorize the suspension of relevant regulatory statutes that agencies under my jurisdiction are authorized by law to administer or enforce as may be necessary to respond to the opioid crisis. Any regulatory statute that agencies under my jurisdiction desire to be suspended must be reviewed by the Governor's Office of General Counsel, and filed with the Opioid Unified Coordination Group.

IN ADDITION, if any administrative order, rule or regulation relating to the opioid crisis is inconsistent with the requirements of this Proclamation, or any rule, regulation, plan or administrative order issued pursuant hereto, or if strict compliance with such provisions would prevent, hinder or delay necessary action to cope with the emergency, then such provision is hereby rescinded for the duration of this Proclamation.

STILL FURTHER, pursuant to 35 Pa.C.S. § 7301(b), all agencies under my jurisdiction are authorized, ordered and directed to issue, amend and rescind such rules, regulations, orders and plans as necessary to carry out their respective responsibilities and functions pursuant to this Proclamation, to issue, amend and rescind such rules and regulations or orders under their respective statutory authorities as may be reasonably necessary to assist in responding to this opioid crisis.

FURTHER, all Commonwealth agencies purchasing supplies or services in response to this emergency are authorized to utilize the emergency procurement procedures set forth in section 516 of the Commonwealth Procurement Code, 62 Pa. C.S. § 516. This Proclamation shall serve as the written determination of the basis for the emergency under section 516.

STILL FURTHER, I hereby urge the governing bodies and executive officers of all political subdivisions that may be affected by this emergency event to act as necessary to meet the current exigencies as legally authorized under this proclamation.



GIVEN under my hand and the Seal of the Governor, at the City of Harrisburg, this ninth day of January two thousand eighteen, the year of the Commonwealth the two hundred forty-second.

Tom Wolf
TOM WOLF
Governor

So what does this mean?

This means that an individual, who could generally carry a firearm in public without a license to carry firearms (LTCF) (with the exception of in the City of Philadelphia as a city of the first class), cannot do so during a state of emergency. However, as the above exceptions reflect, this does not include when the individual is using the firearm for self-defense or if the individual has a license to carry firearms. This is another reason why I always recommend that any individual, regardless of whether he/she desires to conceal carry a firearm, procure an LTCF.

What about confiscation of firearms?

Since Katrina and the confiscation of firearms that occurred during the state of emergency there, individuals are generally concerned about the Government using a state of emergency to confiscate firearms. That is why Section 6107 specifically prevents any form of confiscation of firearms, accessory or ammunition from occurring solely as a result of a state of emergency.

What should you do?

As it is anticipated that this proclamation of a state of emergency will not be terminated for an extended period of time, I would highly recommend that anyone eligible obtain his/her LTCF.

EDIT 1/11/18: For those interested in the impact of this Proclamation on the Great American Outdoors Show and hunting on state game land, please see this follow up article – [Are the Great American Outdoors Show \(GAOS\) and State Game Land Hunting in Jeopardy as a Result of Governor Wolf's Proclamation of Emergency?](#)

Are the Great American Outdoors Show (GAOS) and State Game Land Hunting in Jeopardy as a Result of Governor Wolf's Proclamation of Emergency?

As our viewers are aware, earlier today I published a blog article that [With a Stroke of a Pen, PA Governor Wolf Limits Firearm Rights by Proclaiming a State of Emergency](#); but, what are the unintended (or possibly intended) further consequences of the Proclamation?

As people start to prepare for the NRA's Great American Outdoor Show (GAOS) from February 3-11 in Harrisburg, PA at the Farm Show Complex, it is important to understand the impact on both the vendors and attendees. As I explained in my earlier [article](#), Section 6107, in pertinent part, provides **(a) General rule.**—No person shall carry a firearm upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

- (1) Actively engaged in a defense of that person's life or property from peril or threat.
- (2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

...

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Accessory." Any scope, sight, bipod, sling, light, magazine, clip or other related item that is attached to or necessary for the operation of a firearm.

"Firearm." The term includes any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any weapon.

So what's the concern? How could Governor Wolf's Proclamation possibly affect the Great American Outdoors Show?

As I addressed in my earlier [article](#), the Proclamation seemingly meets the criteria to trigger the Section 6107 prohibitions, since it is an emergency proclamation issued by a State governmental executive. Additionally, to the surprise of many people, the Farm Show Complex, where the show will be held, is actually owned by the Commonwealth and is therefore public property; thereby, prohibiting the carrying of a firearm, as defined by Section 6107, anywhere on the property, during the proclamation of emergency, unless the person meets an exception.

As the first exception is not (or at least not likely) applicable to the show, let's turn to second set of exceptions – an individual who has been issued a license to carry firearms, pursuant to 18 Pa.C.S. § 6109 or who is otherwise exempt under 18 Pa.C.S. § 6106(b). Obviously, the first is self-explanatory, but what about the exemptions found in 6106(b)? Well, Section 6106(b) provides:

- (1) Constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.
- (2) Members of the army, navy, marine corps, air force or coast guard of the United States or of the National Guard or organized reserves when on duty.
- (3) The regularly enrolled members of any organization duly organized to purchase or receive such firearms from the United States or from this Commonwealth.
- (4) Any persons engaged in target shooting with a firearm, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the firearm is not loaded.
- (5) Officers or employees of the United States duly authorized to carry a concealed firearm.
- (6) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property in the discharge of such duties.
- (7) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person, having in his possession, using or carrying a firearm in the usual or ordinary course of such business.
- (8) Any person while carrying a firearm which is not loaded and is in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair, sale or appraisal or back to his home or place of business, or in moving from one place of abode or business to another or from his home to a vacation or recreational home or dwelling or back, or to recover stolen property under section 6111.1(b)(4) (relating to Pennsylvania State Police), or to a place of instruction intended to teach the safe handling, use or maintenance of firearms or back or to a location to which the person has been directed to relinquish firearms under 23 Pa.C.S. § 6108 (relating to relief) or back upon return of the relinquished firearm or to a licensed dealer's place of business for relinquishment pursuant to 23 Pa.C.S. § 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or back upon return of the relinquished firearm or to a location for safekeeping pursuant to 23 Pa.C.S. § 6108.3 (relating to relinquishment to third party for safekeeping) or back upon return of the relinquished firearm.
- (9) Persons licensed to hunt, take furbearers or fish in this Commonwealth, if such persons are actually hunting, taking furbearers or fishing as permitted by such license, or are going to the places where they desire to hunt, take furbearers or fish or returning from such places.
- (10) Persons training dogs, if such persons are actually training dogs during the regular training season.
- (11) Any person while carrying a firearm in any vehicle, which person possesses a valid and lawfully issued license for that firearm which has been issued under the laws of the United States or any other state.
- (12) A person who has a lawfully issued license to carry a firearm pursuant to section 6109 (relating to licenses) and that said license expired within six months prior to the date of arrest and that the individual is otherwise eligible for renewal of the license.
- (13) Any person who is otherwise eligible to possess a firearm under this chapter and who is operating a motor vehicle which is registered in the person's name or the name of a spouse or parent and which contains a firearm for which a valid license has been issued pursuant to section 6109 to the spouse or parent owning the firearm.

(14) A person lawfully engaged in the interstate transportation of a firearm as defined under 18 U.S.C. § 921(a)(3) (relating to definitions) in compliance with 18 U.S.C. § 926A (relating to interstate transportation of firearms).

(15) Any person who possesses a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state, regardless of whether a reciprocity agreement exists between the Commonwealth and the state under section 6109(k), provided:

(i) The state provides a reciprocal privilege for individuals licensed to carry firearms under section 6109.

(ii) The Attorney General has determined that the firearm laws of the state are similar to the firearm laws of this Commonwealth.

(16) Any person holding a license in accordance with section 6109(f)(3).

Clearly, any vendor or attendee who is a “person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person” would be exempt (*but see the below caution*), as would anyone carrying pursuant to a reciprocity agreement or carrying pursuant to subsection (b)(15). Other vendors and attendees would seemingly be prohibited, although some employees may be able to claim that they are agents, messengers or other employees of a “business firm, whose duties require them to protect moneys, valuables and other property in the discharge of such duties.”

Unfortunately, as few people are aware, as a result of the Superior Court’s en banc decision late last year in *Commonwealth v. Anderson*, these “exceptions” in Section 6106(b) were found by the Superior Court to be “defenses” that need to be proven at trial. Thus, any individual claiming “exception” under Section 6106(b) can be prosecuted and forced to argue the exception as a defense to the prosecution.

More disconcerting, unlike the emergency proclamation statute, 35 Pa.C.S. § 7301, utilized by Governor Wolf to issue the proclamation, 18 Pa.C.S. § 6107 does not provide the Governor with any authority to limit or otherwise preclude the enactment of the prohibitions. Rather, the issuance of an emergency proclamation automatically, and seemingly in violation of Article 1, Section 21 and the Second Amendment, prohibits the carrying of “a firearm upon the public streets or upon any public property during [the] emergency.”

In relation to hunting on state game lands, pursuant to Section 6106(b)(9), those individuals would likewise be entitled to the “defense,” provided that he/she is “licensed to hunt, take furbearers or fish in this Commonwealth, if such persons are actually hunting, taking furbearers or fishing as permitted by such license, or are going to the places where they desire to hunt, take furbearers or fish or returning from such places.”

While the General Assembly has previously considered repealing Section 6107, Governor Wolf’s Proclamation of today underscores the necessity for the General Assembly to repeal Section 6107, as it is blatantly unconstitutional.

Please contact your State Representatives and demand that they immediately repeal Section 6107, so that YOUR rights aren’t infringed and so that YOU aren’t forced to pay attorney fees and costs to prove, as a defense, one of the exceptions in Section 6106. When contacting them, also demand that the draconian transportation laws of Section 6106 be repealed, as well.

January 23rd, House Game and Fisheries Committee holding a voting meeting on 3 bills:

HB 997 re: Trapping safety zones. I’m working with PTA (Charlie Sykes) on this

HB 1409 re: Reduced hunting license fees for out-of-state disabled vets.

SB 135 Leashed tracking dogs. Finally on the move (thank God)

Discussion at State BOD Meeting on 27th, 2nd Buck Tag, Name change from WCO to Game Warden, GAOS Feb 3-11