

1 **COMMITTEE SUBSTITUTE**

2 **FOR**

3 **H. B. 2471**

4
5 (By Mr. Speaker (Mr. Thompson) and Delegates Boggs, Swartzmiller,
6 Miley, Young, Sponaugle and Barrett)

7 (Originating in the Committee on the Judiciary)

8 (February 19, 2013)

9
10 A BILL to amend and reenact §15-5-6 and §15-5-19a of the Code of
11 West Virginia, 1931, as amended, all relating to exercise of
12 restricted state and local authority during a declared state
13 of emergency; possession of firearms during a declared state
14 of emergency; prohibiting the restriction or otherwise
15 lawful possession, use, carrying, transfer, transportation,
16 storage or display of a firearm or ammunition during a
17 declared state of emergency; clarifying scope of right to
18 seize or confiscate otherwise lawfully-possessed firearm
19 during a declared state of emergency; providing exceptions
20 thereto; providing a remedy at law and equity for a violations
21 of this article for the improper seizure of firearms or
22 ammunition during a declared state of emergency; providing a
23 cause of action for the return of the ammunition and firearms
24 seized in violation of these proscriptions; establishing a
25 venue for actions; and providing for the award of costs and
26 attorney fees to a prevailing plaintiff.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §15-5-6 and §15-5-19a of the Code of West Virginia, 1931,
3 as amended, be amended and reenacted, all to read as follows:

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

5 **§15-5-6. Emergency powers of Governor.**

6 The provisions of this section shall be operative only during
7 the existence of a state of emergency. The existence of a state of
8 emergency may be proclaimed by the Governor or by concurrent
9 resolution of the Legislature if the Governor in such proclamation,
10 or the Legislature in such resolution, finds that an attack upon
11 the United States has occurred or is anticipated in the immediate
12 future, or that a natural or man-made disaster of major proportions
13 has actually occurred or is imminent within the state, and that the
14 safety and welfare of the inhabitants of this state require an
15 invocation of the provisions of this section. Any such emergency,
16 whether proclaimed by the Governor or by the Legislature, shall
17 terminate upon the proclamation of the termination thereof by the
18 Governor, or the passage by the Legislature of a concurrent
19 resolution terminating such emergency.

20 So long as such state of emergency exists, the Governor shall
21 have and may exercise the following additional emergency powers:

22 (a) To enforce all laws and rules ~~and regulations~~ relating to
23 the provision of emergency services and to assume direct
24 operational control of any or all emergency service forces and
25 helpers in the state;

26 (b) To sell, lend, lease, give, transfer or deliver materials

1 or perform functions relating to emergency services on such terms
2 and conditions as he or she shall prescribe and without regard to
3 the limitations of any existing law and to account to the State
4 Treasurer for any funds received for such property;

5 (c) To procure materials and facilities for emergency services
6 by purchase, condemnation under the provisions of chapter fifty-
7 four of this code or seizure pending institution of condemnation
8 proceedings within thirty days from the seizing thereof and to
9 construct, lease, transport, store, maintain, renovate or
10 distribute such materials and facilities. Compensation for
11 property so procured shall be made in the manner provided in
12 chapter fifty-four of this code;

13 (d) To obtain the services of necessary personnel, required
14 during the emergency, and to compensate them for their services
15 from his or her contingent funds or such other funds as may be
16 available to him or her;

17 (e) To provide and compel the evacuation of all or part of the
18 population from any stricken or threatened area within the state
19 and to take such steps as are necessary for the receipt and care of
20 such evacuees;

21 (f) To control ingress and egress to and from a disaster area,
22 the movement of persons within the area and the occupancy of
23 premises therein;

24 (g) To suspend the provisions of any regulatory statute
25 prescribing the procedures for conduct of state business or the
26 orders, rules or regulations of any state agency, if strict

1 compliance therewith would in any way prevent, hinder or delay
2 necessary action in coping with the emergency;

3 (h) To utilize such available resources of the state and of
4 its political subdivisions as are reasonably necessary to cope with
5 the emergency;

6 (i) To suspend or limit the sale, dispensing or transportation
7 of alcoholic beverages, ~~firearms~~, explosives and combustibles;

8 (j) To make provision for the availability and use of
9 temporary emergency housing; and

10 (k) To perform and exercise such other functions, powers and
11 duties as are necessary to promote and secure the safety and
12 protection of the civilian population.

13 No powers granted under this section may be interpreted to
14 ~~authorize the seizure or confiscation of a firearm from a person~~
15 ~~unless that firearm is unlawfully possessed or unlawfully carried~~
16 ~~by the person, or the person is otherwise engaged in a criminal act~~
17 any action that would violate the prohibitions of section nineteen-
18 a of this article.

19 **§15-5-19a. Possession of firearms during a declared state of**
20 **emergency.**

21 ~~No powers granted under this article to state or local~~
22 ~~authorities may be interpreted to authorize the seizure or~~
23 ~~confiscation of a firearm from a person during a declared state of~~
24 ~~emergency unless that firearm is unlawfully possessed or unlawfully~~
25 ~~carried by the person, or the person is otherwise engaged in a~~
26 ~~criminal act.~~

1 (a) No person acting on behalf or under the authority of the
2 state or a political subdivision of the state may do any of the
3 following during any federal or state declared state of emergency:

4 (1) Prohibit or restrict the otherwise lawful possession,
5 use, carrying, transfer, transportation, storage or display of a
6 firearm or ammunition;

7 (2) Seize, confiscate, or authorize the seizure or
8 confiscation of any otherwise lawfully-possessed firearm or
9 ammunition unless:

10 (A) The person acting on behalf of or under the authority of
11 the state or political subdivision is:

12 (i) Defending himself or another from an assault; or,

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

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

17 (3) Require registration of any firearm or ammunition.

18 (b) The prohibitions of subsection (a) (1) do not prohibit the
19 state or an authorized state or local authority from ordering and
20 enforcing an evacuation or general closure of businesses in the
21 affected area during a declared state of emergency.

22 (c) Any individual aggrieved by a violation of this section
23 may seek relief in an action at law or in equity for redress
24 against any person who subjects such individual, or causes such
25 individual to be subjected, to an action prohibited by this
26 section.

1 (d) In addition to any other remedy at law or in equity, an
2 individual aggrieved by the seizure or confiscation of a firearm or
3 ammunition in violation of this section may bring an action for the
4 return of such firearm or ammunition in the circuit court of the
5 county in which that individual resides or in which such firearm or
6 ammunition is located.

7 (e) In any action or proceeding to enforce this section, the
8 court shall award a prevailing plaintiff costs and reasonable
9 attorney fees.