

**Senate Bill No. 330**

(By Senators Unger, Beach, Williams and Nohe)

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[Introduced February 20, 2013; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]  
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11 A BILL to amend and reenact §15-5-6 and §15-5-19a of the Code of  
12 West Virginia, 1931, as amended, all relating to the Division  
13 of Homeland Security and Emergency Management; emergency  
14 powers of the Governor; possession of firearms during a  
15 declared state of emergency; prohibiting the seizure or  
16 confiscation of lawfully possessed firearms or the  
17 registration of such firearms or ammunition during a declared  
18 state of emergency; and providing remedies for violations of  
19 these provisions, including an action at law and awarding of  
20 attorney fees and costs for prevailing plaintiffs.

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

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

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

1 **§15-5-6. Emergency powers of Governor.**

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

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

18       (a) To enforce all laws, rules and regulations relating to the  
19 provision of emergency services and to assume direct operational  
20 control of any or all emergency service forces and helpers in the  
21 state;

22       (b) To sell, lend, lease, give, transfer or deliver materials  
23 or perform functions relating to emergency services on such terms  
24 and conditions as he or she shall prescribe and without regard to

1 the limitations of any existing law and to account to the State  
2 Treasurer for any funds received for such property;

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

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

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

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

22       (g) To suspend the provisions of any regulatory statute  
23 prescribing the procedures for conduct of state business or the  
24 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  
18 nineteen-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~~

1 ~~carried by the person, or the person is otherwise engaged in a~~  
2 ~~criminal act.~~

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

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

9 (2) Seize, confiscate or authorize the seizure or confiscation  
10 of any otherwise lawfully-possessed firearm or ammunition unless  
11 the person acting on behalf of or under the authority of the state  
12 is defending himself or another from an assault, arresting a person  
13 in actual possession of a firearm or ammunition for a violation of  
14 law or unless the firearm or ammunition is being seized or  
15 confiscated as evidence of a crime; or

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

17 (b) The prohibitions of subsection (a)(1) as they relate to  
18 transfer do not apply to the commercial sale of firearms or  
19 ammunition if an authorized authority has ordered an evacuation or  
20 general closure of businesses in the affected area.

21 (c) Any individual aggrieved by a violation of this section  
22 may seek relief in an action at law or in equity for redress  
23 against any person who subjects the individual or causes the  
24 individual to be subjected to an action prohibited by this 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 the firearm or ammunition in the circuit court of the  
5 county in which that individual resides or in which the 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.

NOTE: The purpose of this bill is to prohibit the seizure or confiscation of lawfully possessed firearms or the registration of such firearms or ammunition during a declared state of emergency. The bill also provides remedies for violations of these provisions, including an action at law and awarding of attorney fees and costs for prevailing plaintiffs.

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