

COMMITTEE SUBSTITUTE

FOR

# **H. B. 2471**

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(BY MR. SPEAKER (MR. THOMPSON)  
AND DELEGATES BOGGS, SWARTZMILLER, MILEY,  
YOUNG, SPONAUGLE AND BARRETT)

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(Originating in the Committee on the Judiciary)  
(February 19, 2013)

A BILL to amend and reenact §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, all relating to exercise of restricted state and local authority during a declared state of emergency; possession of firearms during a declared state of emergency; prohibiting the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency;

clarifying scope of right to seize or confiscate otherwise lawfully-possessed firearm during a declared state of emergency; providing exceptions thereto; providing a remedy at law and equity for a violations of this article for the improper seizure of firearms or ammunition during a declared state of emergency; providing a cause of action for the return of the ammunition and firearms seized in violation of these proscriptions; establishing a venue for actions; and providing for the award of costs and attorney fees to a prevailing plaintiff.

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

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

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

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

1       The provisions of this section shall be operative only during  
2       the existence of a state of emergency. The existence of a state of  
3       emergency may be proclaimed by the Governor or by concurrent  
4       resolution of the Legislature if the Governor in such proclama-  
5       tion, or the Legislature in such resolution, finds that an attack  
6       upon the United States has occurred or is anticipated in the

7 immediate future, or that a natural or man-made disaster of  
8 major proportions has actually occurred or is imminent within  
9 the state, and that the safety and welfare of the inhabitants of this  
10 state require an invocation of the provisions of this section. Any  
11 such emergency, whether proclaimed by the Governor or by the  
12 Legislature, shall terminate upon the proclamation of the  
13 termination thereof by the Governor, or the passage by the  
14 Legislature of a concurrent resolution terminating such emer-  
15 gency.

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

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

23       (b) To sell, lend, lease, give, transfer or deliver materials or  
24 perform functions relating to emergency services on such terms  
25 and conditions as he or she shall prescribe and without regard to  
26 the limitations of any existing law and to account to the State  
27 Treasurer for any funds received for such property;

28 (c) To procure materials and facilities for emergency  
29 services by purchase, condemnation under the provisions of  
30 chapter fifty-four of this code or seizure pending institution of  
31 condemnation proceedings within thirty days from the seizing  
32 thereof and to construct, lease, transport, store, maintain,  
33 renovate or distribute such materials and facilities. Compensa-  
34 tion for property so procured shall be made in the manner  
35 provided in chapter fifty-four of this code;

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

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

44 (f) To control ingress and egress to and from a disaster area,  
45 the movement of persons within the area and the occupancy of  
46 premises therein;

47 (g) To suspend the provisions of any regulatory statute  
48 prescribing the procedures for conduct of state business or the

49 orders, rules or regulations of any state agency, if strict compli-  
50 ance therewith would in any way prevent, hinder or delay  
51 necessary action in coping with the emergency;

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

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

57 (j) To make provision for the availability and use of tempo-  
58 rary emergency housing; and

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

62 No powers granted under this section may be interpreted to  
63 ~~authorize the seizure or confiscation of a firearm from a person~~  
64 ~~unless that firearm is unlawfully possessed or unlawfully carried~~  
65 ~~by the person, or the person is otherwise engaged in a criminal~~  
66 ~~act~~ any action that would violate the prohibitions of section  
67 nineteen-a of this article.

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

1       ~~No powers granted under this article to state or local~~  
2 ~~authorities may be interpreted to authorize the seizure or~~  
3 ~~confiscation of a firearm from a person during a declared state~~  
4 ~~of emergency unless that firearm is unlawfully possessed or~~  
5 ~~unlawfully carried by the person, or the person is otherwise~~  
6 ~~engaged in a criminal act.~~

7       (a) No person acting on behalf or under the authority of the  
8 state or a political subdivision of the state may do any of the  
9 following during any federal or state declared state of emer-  
10 gency:

11       (1) Prohibit or restrict the otherwise lawful possession, use,  
12 carrying, transfer, transportation, storage or display of a firearm  
13 or ammunition;

14       (2) Seize, confiscate, or authorize the seizure or confiscation  
15 of any otherwise lawfully-possessed firearm or ammunition  
16 unless:

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

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

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

22 (B) The firearm or ammunition is being seized or confis-  
23 cated as evidence of a crime; or,

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

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

29 (c) Any individual aggrieved by a violation of this section  
30 may seek relief in an action at law or in equity for redress against  
31 any person who subjects such individual, or causes such individ-  
32 ual to be subjected, to an action prohibited by this section.

33 (d) In addition to any other remedy at law or in equity, an  
34 individual aggrieved by the seizure or confiscation of a firearm  
35 or ammunition in violation of this section may bring an action  
36 for the return of such firearm or ammunition in the circuit court  
37 of the county in which that individual resides or in which such  
38 firearm or ammunition is located.

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

