

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4559**

By Delegate C. Pritt

[Introduced ; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended, relating to  
 2 prohibit the emergency powers of the Governor from restricting the ability of West Virginia  
 3 citizens to enter or exit the State of West Virginia; and providing right to injunctive relief.

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

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

**§15-5-6. Proclamation of a state of emergency or state of preparedness by the Governor or  
 the Legislature; additional powers of the Governor during a state of emergency or  
 state of preparedness.**

1 (a) The provisions of this section, and any executive order issued pursuant to the  
 2 provisions of this section, are operative only during the existence of a state of emergency or state  
 3 of preparedness: *Provided*, That nothing in this section or in any executive order issued hereunder  
 4 may be construed to suspend or supersede any provision of the United States Constitution or  
 5 West Virginia Constitution.

6 (b) The existence of a state of emergency may be proclaimed by the Governor by  
 7 executive order or by concurrent resolution of the Legislature if the Governor in the proclamation,  
 8 or the Legislature in the concurrent resolution, finds that conditions warranting the proclamation of  
 9 a state of emergency, as defined in this article, exist, and that the health, safety, and welfare of the  
 10 inhabitants of this state require an invocation of the provisions of this section: *Provided*, That a  
 11 gubernatorially proclaimed state of emergency expires 60 days after issuance of the executive  
 12 order unless, prior to the 60th day, the Legislature adopts a concurrent resolution extending the  
 13 state of emergency beyond 60 days. A concurrent resolution adopted by the Legislature to extend  
 14 a state of emergency proclaimed by the governor shall set forth within its terms the length of time  
 15 for which the state of emergency shall be extended. A state of emergency, whether proclaimed by  
 16 the Governor or by the Legislature, terminates upon the issuance of a proclamation of termination

17 by the Governor, or the passage by the Legislature of a concurrent resolution terminating the state  
18 of emergency.

19 (c) The existence of a state of preparedness may be proclaimed by the Governor by  
20 executive order or by concurrent resolution of the Legislature, if the Governor in the proclamation  
21 or the Legislature in the resolution, finds that conditions warranting the proclamation of a state of  
22 preparedness, as defined in this article, exist, and that the health, safety, and welfare of the  
23 inhabitants of this state require the invocation of the provisions of this section: *Provided*, That the  
24 Governor or the Legislature shall proclaim a state of preparedness as a "Class I state of  
25 preparedness" or a "Class II state of preparedness", as defined in this article, by law: *Provided*  
26 *however*, That a gubernatorially proclaimed Class I state of preparedness expires 30 days after  
27 issuance of the executive order unless, prior to the 30th day, the Legislature adopts a concurrent  
28 resolution extending the state of preparedness beyond 30 days. A concurrent resolution adopted  
29 by the Legislature to extend a Class I state of preparedness proclaimed by the governor shall set  
30 forth within its terms the length of time for which the state of preparedness shall be extended. A  
31 Class II state of preparedness, whether proclaimed by the Governor or by the Legislature,  
32 terminates upon the issuance of a proclamation of termination by the Governor, or the passage by  
33 the Legislature of a concurrent resolution terminating the Class II state of preparedness.

34 (d) When a state of emergency follows a state of preparedness involving the same or  
35 substantially similar circumstances, the total time allotted for the duration of the two combined  
36 shall be no more than 90 days, unless the Governor follows the requirements for extending the  
37 state of emergency under subsection (b) of this section.

38 (e) Any proclamation or concurrent resolution issued under this section shall include, in  
39 general terms:

40 (1) A description of the facts and circumstances warranting the proclamation or concurrent  
41 resolution; and

42 (2) A designation of the geographic area threatened.

43 (f) Any proclamation or resolution shall be disseminated as soon as practicable to the news  
44 media and any other means which are calculated to bring its contents to the attention of the  
45 general public: *Provided*, That for a gubernatorial proclamation of a state of emergency or state of  
46 preparedness, the Governor shall provide a copy of the executive order to the President of the  
47 Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and  
48 Finance.

49 (g) Under a duly proclaimed state of emergency or state of preparedness, the Governor  
50 has the following additional powers which are intended to be construed to authorize actions which  
51 are consistent with constitutional or statutory law, or with final orders of those courts of competent  
52 jurisdiction to which the Governor is subject:

53 (1) To enforce all laws and rules relating to the provision of emergency services and to  
54 assume direct operational control of any or all emergency service entities and personnel in the  
55 state;

56 (2) To sell, lend, lease, give, or transfer property, to make purchases, deliver materials or  
57 perform functions relating to emergency services on terms and conditions he or she prescribes  
58 without regard to the limitations of any existing law or being required to account to the State  
59 Treasurer for any funds received for the property;

60 (3) To procure materials and facilities for emergency services by purchase, condemnation  
61 under the provisions of §54-1-1 *et seq.* of this code, or seizure pending institution of condemnation  
62 proceedings within 30 days from the seizing thereof and to construct, lease, transport, store,  
63 maintain, renovate, or distribute the materials and facilities. Compensation for the procured  
64 property shall be made in the manner provided in §54-1-1 *et seq.* of this code;

65 (4) To obtain the services of necessary personnel required during the emergency or in  
66 preparation for the emergency, and to compensate such personnel for their services from the  
67 Governor's Contingent Fund or other funds available to him or her;

68 (5) To provide and compel the evacuation of all or part of the population from any stricken

69 or threatened area within the state and to take steps that are necessary for the receipt and care of  
70 the evacuees;

71 (6) To control ingress and egress into or out of a disaster area or other area subject to a  
72 state of emergency or state of preparedness, as well as the movement of persons and occupancy  
73 of premises within the area: Provided, That this authority may not restrict the ability of West  
74 Virginia citizens to enter or exit the State of West Virginia. Any person aggrieved by a breach of  
75 this subdivision may seek injunctive relief in the Circuit Court of Kanawha County and, if  
76 successful, is entitled to an award of attorney fees and damages;

77 (7) To suspend the provisions of any statute prescribing the procedures for the conduct of  
78 state business or the orders, or rules of any state agency, if strict compliance therewith would in  
79 any way prevent, hinder, or delay necessary action in coping with the emergency: *Provided*, That  
80 nothing in this subdivision may be construed as granting the Governor the power to suspend any  
81 provision of this section;

82 (8) To use available resources of the state and of its political subdivisions that are  
83 reasonably necessary to cope with the emergency or to prepare for the emergency;

84 (9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages,  
85 explosives, and combustibles: *Provided*, That explosives and combustibles do not include  
86 firearms, ammunition, components of ammunition, or ammunition-reloading equipment and  
87 supplies;

88 (10) To make provision for the availability and use of temporary emergency housing; and

89 (11) To perform and exercise other functions, powers and duties that are necessary to  
90 promote and secure the safety and protection of the civilian population.

91 (h) The declaration of a state of preparedness has the same effect as a declaration of a  
92 state of emergency for the purposes of the Emergency Management Assistance Compact  
93 established in §15-5-22 of this code, and the Statewide Mutual Aid System set forth in §15-5-28 of  
94 this code.

95 (i) The powers granted under this section do not authorize any action that would violate the  
96 prohibitions of §15-5-19a of this code.

97 (j) During any state of preparedness or state of emergency proclaimed at any time, an  
98 executive order of the Governor may not:

99 (1) Close churches or other houses of worship or prevent their operation in any manner  
100 that is more restrictive than the least restrictive provisions in place for the operation of the most  
101 essential facilities of government or private enterprise.

102 (2) Suspend or limit the lawful sale, lawful transfer, or lawful transportation of firearms,  
103 ammunition, components of ammunition, or ammunition-reloading equipment and supplies; or

104 (3) Except as authorized by the provisions of this article, interfere with, or impair the  
105 operation of the news media.

106 (k) Unless expressly authorized by an executive order of the Governor, a municipal,  
107 county, or state health officer, under color of a duly proclaimed state of emergency or state of  
108 preparedness, shall not take any enforcement action which is not authorized by statute.

109 (l) Any suit filed challenging an executive order issued relating to a state of preparedness  
110 or emergency pursuant to the authority granted in this section shall be limited to a petition for a writ  
111 of prohibition or mandamus pursuant to Rule 16 of the Rules of the West Virginia Supreme Court  
112 of Appeals. The provisions of §55-17-3 of this code are not applicable to any suit filed challenging  
113 an executive order issued pursuant to this section.

NOTE: The purpose of this bill is to prohibit the emergency powers of the Governor from restricting the ability of West Virginia citizens to enter or exit the State of West Virginia.

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