

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5525

By Delegates Ridenour, Longanacre, Steele,
Hillenbrand, Butler, Sheedy, Kirby, McGeehan, and
Phillips

[Introduced February 08, 2024; Referred to the
Committee on Veterans' Affairs and Homeland
Security then Finance]

1 A BILL to amend and reenact §15-4-1, §15-4-2, §15-4-3, §15-4-4, §15-4-5, §15-4-6, §15-4-7, §15-
 2 4-8, §15-4-9, §15-4-10, §15-4-11, §15-4-12, and §15-4-13 of the Code of West Virginia,
 3 1931, as amended, and to amend said Code by adding thereto three new sections,
 4 designated §15-4-14, §15-4-15, and §15-4-16, all related to updating and revising all
 5 provisions of this Code relating to the West Virginia State Guard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA STATE GUARD.

~~§15-4-1. Governor authorized to organize and maintain West Virginia state guard. Findings~~

1 ~~Whenever any part of the National Guard of this state is in active federal service, the~~
 2 ~~Governor is hereby authorized to organize and maintain within this state during such period, under~~
 3 ~~such regulations as the secretary of defense of the United States may prescribe for discipline in~~
 4 ~~training, such military forces as the Governor may deem necessary to defend this state. Such~~
 5 ~~forces shall be composed of officers commissioned or assigned, and such able-bodied male~~
 6 ~~citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of~~
 7 ~~the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional~~
 8 ~~to and distinct from the National Guard and shall be known as the "West Virginia state guard":~~
 9 ~~*Provided,* That any funds appropriated by the Legislature to the Adjutant General for the~~
 10 ~~organization, administration, training and supply of the organized militia may be expended for~~
 11 ~~such purposes with respect to the West Virginia state guard. Such forces shall be uniformed.~~

(a) Legislative Findings - The State of West Virginia finds that:

13 (1) The Second Amendment to the Constitution of the United States asserts that the militia
 14 must be well regulated.

(2) A State Defense Force is authorized under Federal law 32 U.S.C. §109.

16 (3) Due to the potential for military conflicts involving the United States and the possible
 17 deployment of the West Virginia National Guard, including many of West Virginia members of law
 18 enforcement, other security personnel, firefighters and emergency medical services, the State of

19 West Virginia will a form a State Guard to provide security for the state and respond to crises.

§15-4-2. Rules and regulations. Governor directed to organize and maintain the West Virginia State Guard.

1 ~~The Governor is hereby authorized to prescribe rules and regulations not inconsistent with~~
2 ~~the provisions of this article governing the enlistment, organization, administration, equipment,~~
3 ~~maintenance, training and discipline of such forces: *Provided*, That such rules and regulations,~~
4 ~~insofar as he or she deems practicable and desirable, shall conform to existing law governing and~~
5 ~~pertaining to the National Guard and the rules and regulations promulgated thereunder, and shall~~
6 ~~prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces or by any~~
7 ~~member of such forces from any individual, firm, association, or corporation by reason of such~~
8 ~~membership.~~

9 The Governor is hereby directed to organize and maintain a State Guard no later than April
10 19th, 2024, to defend this state, respond to crises (particularly natural disasters and other declared
11 emergencies), maintain order during crises and civil disturbance, and provide civil defense. Such
12 forces shall:

13 (a) Be composed of officers commissioned or assigned, and such able-bodied male
14 citizens of the United States, over 16 years of age, as shall volunteer for service therein,
15 supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as
16 provided by law.

17 (b) Be in addition to and distinct from the National Guard and shall be known as the "West
18 Virginia State Guard": *Provided*, That the Adjutant General shall prepare an annual budget for the
19 estimated annual pay and allowances and operating expenses of the West Virginia State Guard,
20 and a budgetary line item fund shall be designated in the state budget for the West Virginia State
21 Guard and: *Provided further*, That any funds appropriated by the Legislature to the Adjutant
22 General for the organization, administration, training and supply of the West Virginia State Guard's
23 organized militia may be expended solely for such purposes with respect to the West Virginia

24 State Guard. Any unused monies in the West Virginia State Guard Fund remaining at the
25 conclusion of any fiscal year shall carry forward into the next year's West Virginia State Guard
26 Fund, and the Legislature may in its discretion consider the West Virginia State Guard Fund
27 existing balance in its future annual appropriations.

28 (c) The State Guard will consist of five regiments, organized regionally, each having:

29 (1) A headquarters company, including medical elements staffed by volunteer auxiliaries.

30 (2) 2-5 battalions each organized for regional response.

31 (3) A reconnaissance company.

32 (4) An engineer company, comprised of volunteer engineering elements (including back
33 hoes, excavators, bulldozers, tractors, etc.) from local businesses and government entities.

34 (d) Each battalion will consist of:

35 (1) A headquarters company, including medical elements.

36 (2) 3-5 companies, with 2-4 platoons each.

37 (3) Each platoon will have 25-45 men.

38 (4) At least one company will be formed in each county.

39 (e) Units will focus on light infantry missions, crisis response (particularly responses to
40 natural disasters), civil disturbance, and civil defense (particularly responses to mass casualty
41 events).

42 (f) Monthly training will consist of 12 hours per month, with at least one 8-hour block
43 training period.

44 (1) The Adjutant General is responsible for organization and training to accomplish
45 assigned missions and administration of the State Guard, and will use existing resources and
46 State Guard volunteer auxiliaries to accomplish these tasks.

47 (2) Basic training for new recruits will be accomplished at the regiment/battalion-level.

48 (3) Training may be in conjunction with other entities, including elements of the National
49 Guard, County Sheriffs, fire departments, medical response elements, and emergency

50 management agencies.

51 (g) Regiments report to the Adjutant General for military and civil disturbance training,
52 issues, and missions.

53 (h) When requested by the Adjutant General, the Legislature may appropriate funds for the
54 support and operation of the State Guard, including a pay and allowances fund managed by the
55 Adjutant General. The Adjutant General will initially request funds to purchase equipment deemed
56 necessary to commence organizing the State Guard, including tactical communications
57 equipment to facilitate command and control from regiment down to company levels, and other
58 equipment deemed necessary.

59 (i) Battalions and companies will report to their respective regiments/battalions for military
60 issues and missions, and to their respective county commissions or county sheriffs for crisis
61 response, civil disturbance and civil defense issues and missions.

§15-4-3. Pay and allowances. Rules and Regulations.

1 ~~The pay for officers and enlisted men of the West Virginia state guard for service at camps~~
2 ~~of instruction, rifle practice, practice marches and maneuvers, or other duties ordered by the~~
3 ~~Governor, shall be such as are provided in the National Defense Act or amendments thereto.~~
4 ~~Officers and enlisted men, when employed in the actual service of the state, as defined and~~
5 ~~provided in this article, beginning on the day they assembled at their armories or other designated~~
6 ~~places, until the day they have returned thereto and been properly relieved, inclusive, fractional~~
7 ~~parts of a day counting as a full day, shall receive the same pay and allowances as provided for~~
8 ~~officers and enlisted men in the West Virginia National Guard.~~

9 The Governor is hereby authorized to prescribe rules and regulations not inconsistent with
10 the provisions of this article governing the enlistment, organization, administration, equipment,
11 maintenance, training and discipline of such forces: *Provided*, That such rules and regulations,
12 insofar as he deems practicable and desirable, shall conform to existing law governing and
13 pertaining to the National Guard, and the rules and regulations promulgated thereunder. The

14 Uniform Code of Military Justice (UCMJ) in effect in 1994 will govern overall discipline.

§15-4-4. Arms and equipment; use of state armories, etc. Pay and Allowances.

1 For use of such forces, the Governor is hereby authorized to requisition from the secretary
2 of war such arms and equipment as may be in possession of and can be spared by the war
3 department; and to make available to such forces the facilities of state armories and their
4 equipment and such other state premises and property as may be available.

5 Officers and enlisted men of the West Virginia State Guard will receive no direct
6 compensation for service at camps of instruction, rifle practice, practice marches and maneuvers,
7 or other duties, except when called to active service of the state by the Governor, County
8 Commissions or County Sheriffs. Officers and enlisted men, when called to active service of the
9 state, as defined, and provided in this article, beginning on the day they assembled at their
10 armories or other designated places, until the day they have returned thereto and been properly
11 relieved, inclusive, fractional parts of a day counting as a full day, shall receive the same pay and
12 allowances as provided for officers and enlisted men in the West Virginia National Guard. The
13 Adjutant General will establish a pay and allowances fund to support activation of the State Guard.

§15-4-5. Service limited to state, except as to fresh pursuit; apprehension of persons in another state. Arms and equipment; use of state armories, etc.

1 Such forces shall not be required to serve outside the boundaries of this state. Except that
2 any organization, unit or detachment of such forces, upon order of the officer in immediate
3 command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy
4 forces beyond the borders of this state into another state until they are apprehended or captured
5 by such organization, unit or detachment or until the military or police forces of the other state or
6 the forces of the United States have had a reasonable opportunity to take up the pursuit or
7 apprehend or capture such persons: *Provided*, That such other state shall have given authority by
8 law for such pursuit by such forces of this state. Any such person who shall be apprehended or
9 captured in such other state by an organization, unit or detachment of the forces of this state shall

10 ~~without unnecessary delay be surrendered to the military or police forces of the state in which he~~
11 ~~or she is taken or to the United States, but such surrender shall not constitute a waiver by this state~~
12 ~~of its right to extradite or prosecute such person for any crime committed in this state.~~

1 For use of such forces, the Governor is hereby authorized to requisition or obtain such
2 arms and equipment from the United States Department of Defense as may be necessary to
3 properly equip the State Guard; and to make available to such forces the facilities of state armories
4 and their equipment and such other state premises and property as may be available.

5 (a) State Guard members will muster with their own personal firearms and equipment.
6 Provided, That such firearms will be semi-automatic battle rifles in 5.56 or .308 caliber, are
7 properly maintained and in good serviceable condition. Other caliber rifles may be considered by
8 battalion commanders for limited use. State Guard members will be able to muster with their
9 weapon, fully serviceable military equipment, including uniform, helmet, load-bearing equipment,
10 pack and boots, and sufficient rounds of 5.56 or.308 caliber State Guard-approved ammunition.
11 State Guard members must also maintain an additional rounds of 5.56 or.308 caliber ammunition
12 available for use at all times.

13 (b) Equipment and clothing must be fully serviceable military uniforms and equipment.
14 State Guard members will wear serviceable field uniforms of the U.S. armed forces in use since
15 1990.

~~§15-4-6. Pursuit and apprehension of certain persons in this state by military forces of~~
~~another state. Service limited to state, except as to fresh pursuit; apprehension of~~
~~persons in another state.~~

1 ~~Any military forces or organization, unit or detachment thereof, of another state, who are in~~
2 ~~fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit~~
3 ~~into this state until the military or police forces of this state or the forces of the United States have~~
4 ~~had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and~~
5 ~~are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any~~

6 ~~such person who shall be captured or arrested by the military forces of such other state while in~~
7 ~~this state shall, without unnecessary delay, be surrendered to the military or police forces of this~~
8 ~~state to be dealt with according to law. This section shall not be construed so as to make unlawful~~
9 ~~any arrest in this state which would otherwise be lawful, and nothing contained in this section shall~~
10 ~~be deemed to repeal any of the provisions of the uniform act on the fresh pursuit of criminals.~~

11 Such forces shall not be required to serve outside the boundaries of this state. Except that
12 any organization, unit or detachment of such forces, upon order of the officer in immediate
13 command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy
14 forces beyond the borders of this state into another state until they are apprehended or captured
15 by such organization, unit or detachment or until the military or police forces of the other state or
16 the forces of the United States have had a reasonable opportunity to take up the pursuit or
17 apprehend or capture such persons: *Provided*, That such other state shall have given authority by
18 law for such pursuit by such forces of this state. Any such person who shall be apprehended or
19 captured in such other state by an organization, unit or detachment of the forces of this state shall
20 without unnecessary delay be surrendered to the military or police forces of the state in which he is
21 taken or to the United States, but such surrender shall not constitute a waiver by this state of its
22 right to extradite or prosecute such person for any crime committed in this state.

§15-4-7. Status of forces and members thereof with regard to federal service. Pursuit and
apprehension of certain persons in this state by military forces of another state.

1 ~~Nothing in this article shall be construed as authorizing such forces, or any part thereof, to~~
2 ~~be called, ordered or in any manner drafted as such, into the military service of the United States,~~
3 ~~but no person shall by reason of his or her enlistment or commission in any such forces be~~
4 ~~exempted from military service under any law of the United States.~~

5 Any military forces or organization, unit or detachment thereof, of another state, who are in
6 fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit
7 into this state until the military or police forces of this state or the forces of the United States have

8 had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and
 9 are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any
 10 such person who shall be captured or arrested by the military forces of such other state while in
 11 this state shall, without unnecessary delay, be surrendered to the military or police forces of this
 12 state to be dealt with according to law. This section shall not be construed so as to make unlawful
 13 any arrest in this state which would otherwise be lawful, and nothing contained in this section shall
 14 be deemed to repeal any of the provisions of the uniform act on the fresh pursuit of criminals. The
 15 Governor may, upon declaration, declare provisions of this section to be temporarily superseded
 16 for a specified period of time.

§15-4-8. Civil organizations, etc., not to be enlisted as unit. Status of forces and members thereof with regard to federal service.

1 ~~No civil organization, society, club, post, order, fraternity, association, brotherhood, body,~~
 2 ~~union, league, or other combination of persons or civil group shall be enlisted in such forces as an~~
 3 ~~organization or unit.~~

4 Nothing in this article shall be construed as authorizing such forces, or any part thereof, to
 5 be called, ordered or in any manner drafted as such, into the military service of the United States,
 6 but no person shall by reason of his enlistment or commission in any such forces be exempted
 7 from military service under any law of the United States.

§15-4-9. Disqualifications. Civil organizations, etc., not to be enlisted as unit.

1 ~~No person shall be commissioned or enlisted in such forces who is not a citizen of the~~
 2 ~~United States or who has been expelled or dishonorably discharged from any military or naval~~
 3 ~~organization of this state, or of another state, or of the United States.~~

4 No civil organization, society, club, post, order, fraternity, association, brotherhood, body,
 5 union, league, or other combination of persons or civil group shall be enlisted in such forces as an
 6 organization or unit.

§15-4-10. Oath of officers. Disqualifications.

1 ~~The oath to be taken by officers commissioned in such forces shall be substantially in the~~
 2 ~~form prescribed for officers of the National Guard, substituting the words "West Virginia state~~
 3 ~~guard" _____ where _____ necessary.~~

1 No person shall be commissioned or enlisted in such forces who is not a citizen of the
 2 United States or who has been expelled or dishonorably discharged from any military or naval
 3 organization of this state, or of another state, or of the United States; is a convicted felon; has a
 4 misdemeanor offense of domestic violence or violence against law enforcement; or has diagnosed
 5 mental health issues.

§15-4-11. Term of enlistment; oath of enlisted men. Oath of Officers.

6 ~~No person shall be enlisted for more than one year but such enlistment may be renewed.~~
 7 ~~The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed~~
 8 ~~for enlisted men of the National Guard, substituting the words "West Virginia state guard" where~~
 9 ~~necessary.~~

10 Commissions will be two years and may be renewed. The oath to be taken by officers
 11 commissioned in such forces shall be as follows "I, [name], do solemnly swear (or affirm) that I will
 12 support and defend the Constitution of the United States and the Constitution of the State of West
 13 Virginia against all enemies, foreign and domestic; that I will bear true faith and allegiance to the
 14 same; that I will obey the lawful orders of the Governor of the State of West Virginia; that I take this
 15 obligation freely, without any mental reservation or purpose of evasion; and that I will well and
 16 faithfully discharge the duties of the Office of [grade] in the West Virginia State Guard on which I
 17 am _____ about _____ to _____ enter, _____ so _____ help _____ me _____ God."

§15-4-12. Articles of war to apply as to court-martial, etc.; freedom from arrest; jury duty.

Terms of enlistment; oath of enlisted men.

1 ~~(a) Whenever such forces or any part thereof shall be ordered out for active service the~~
 2 ~~articles of war of the United States applicable to members of the National Guard of this state in~~
 3 ~~relation to courts-martial, their jurisdiction and the limits of punishment and the rules and~~

4 ~~regulations prescribed thereunder shall be in full force and effect with respect to the West Virginia~~
5 ~~state guard.~~

6 ~~(b) No officer or enlisted man of such forces shall be arrested on any warrant, except for~~
7 ~~treason or felony, while going to, remaining at, or returning from a place where he or she is ordered~~
8 ~~to attend for military duty. Every officer and enlisted man of such forces shall, during his or her~~
9 ~~service therein, be exempt from service upon any posse comitatus and from jury duty.~~

10 Enlistments will be two years and may be renewed. The oath to be taken upon enlistment
11 in such forces shall be as follows: "I do hereby acknowledge to have voluntarily enlisted this ___ day
12 of _____, _____, in the West Virginia State Guard for a period of ___ year(s) under the conditions
13 prescribed by law, unless sooner discharged by proper authority. I, _____, do solemnly swear
14 (or affirm) that I will support and defend the Constitution of the United States and of the State of
15 West Virginia against all enemies, foreign and domestic; that I will bear true faith and allegiance to
16 the same; and that I will obey the orders of the Governor of the State of West Virginia and the
17 orders of the officers or officials appointed over me, according to law and regulations. So help me
18 God."

**§15-4-13. Citation of article. Articles of war to apply as to court-martial, etc.; freedom from
arrest; jury duty.**

1 This article may be cited as the "West Virginia State Guard Act.

2 (a) Whenever such forces or any part thereof shall be ordered out for active service the
3 articles of war of the United States applicable to members of the National Guard of this state in
4 relation to courts-martial, their jurisdiction and the limits of punishment and the rules and
5 regulations prescribed thereunder shall be in full force and effect with respect to the West Virginia
6 State Guard.

7 (b) No officer or enlisted man of such forces shall be arrested on any warrant, except for
8 treason or felony, while going to, remaining at, or returning from a place where he is ordered to
9 attend for military duty. Every officer and enlisted man of such forces shall, during his service

10 therein, be exempt from service upon any posse comitatus and from jury duty.

§15-4-14. Citation of article.

1 This article may be cited as the "West Virginia State Guard Act."

§15-4-15. Recruitment West Virginia State Guard; incentives; keeping of arms; personnel issues; etc.

1 (a) Recruitment for the State Guard will be accomplished by the Adjutant General and will
2 occur at West Virginia National Guard armories and County Sheriffs' offices.

3 (b) Military veterans and law enforcement officers will be asked, but will not be required, to
4 assume officer and enlisted leadership positions in the State Guard commensurate with their
5 former ranks and experience throughout the force structure.

6 (c) State Guard members qualify for similar state veterans' benefits as other U.S. military
7 veterans after at least 2 years consisting of at least 300 hours of honorable service (those with 20
8 years' service, will continue benefits after separation).

9 (1) State Guard members will receive the same protections, including protection against
10 employment discrimination, afforded to West Virginia National Guard members.

11 (2) State Guard members qualify for WV educational benefits after 6 years of honorable
12 service.

13 (3) State Guard members will receive an annual \$2000 state income tax credit or \$100
14 property tax reduction while serving in the State Guard after at least 2 years consisting of 350
15 hours of honorable service; this will increase by 50 per cent every 2 years of honorable service
16 (with at least 350 hours of service); after six years of honorable service members may take both
17 state income tax credits and property tax reductions; those with 20 year's honorable service, will
18 continue to receive these benefits after separation.

19 (4) The State Treasurer will develop a death benefits program commensurate with the
20 National Guard for any deaths of State Guard members while on duty.

21 (5) The West Virginia Insurance Commissioner will develop a worker's compensation

22 program commensurate with any West Virginia government employee for any injuries to State
23 Guard members sustained while on duty.

24 (6) After two years honorable service, State Guard members will enjoy the same veteran
25 employment preferences for West Virginia government positions as members of the U.S. military
26 and West Virginia National Guard.

27 (7) The West Virginia Department of Natural Resources will develop a program to provide
28 State Guard members, with two years honorable service, with free annual hunting and fishing
29 licenses.

30 (8) State Guard members may retain any firearm, without interference by any
31 governmental entity. All such firearms are sanctioned by the State of West Virginia. Any weapon
32 and ammunition used by members of the State Guard, and the locations that those weapons are
33 stored, are considered part of the State Armory of West Virginia, and will be afforded legal
34 protection by the State of West Virginia. Any weapons and ammunition kept by State Guard
35 members discharged after six years under honorable conditions, members of U.S. military
36 discharged under honorable conditions, current and former law enforcement officers and
37 firefighters are also considered part of the State Armory of West Virginia, and will be afforded legal
38 protection by the State of West Virginia.

39 (9) Volunteers must be able to complete a physical fitness test, and mental aptitude and
40 psychological exam; and must be successfully interviewed by State Guard battalion officers and
41 recommended for a position and initial rank in the State Guard.

42 (10) Volunteers may administratively separate before six years with no benefits.

43 (d) Individuals, including those not physically capable, may volunteer as auxiliaries to
44 provide support at the regimental level. Volunteer auxiliaries will provide medical, nursing,
45 administrative staff and recruitment support, security, maintenance, and other service support.
46 Volunteer auxiliaries are also assured of their ability to retain any firearm, but are not otherwise
47 eligible for veterans' benefits, unless having already fulfilled the criteria for a veteran.

48 (e) The State of West Virginia may impose a military service obligation of up to six years in
 49 the State Guard on all men residing in West Virginia. Individuals who have already served
 50 honorably in the U.S. military; or as a law enforcement officer, firefighter, or in the State Guard for
 51 over six years; or are over 65 years or unfit for service are exempt.

§15-4-16. Activation of the State Guard.

1 (a) The Governor may call up elements of the State Guard to active duty for up to one
 2 month to respond to emergencies.

3 (b) When activated, the Adjutant General of the State of West Virginia will have authorities
 4 over the State Guard.

5 (c) County commissions may call up companies or battalions to active duty in their county
 6 for up to two weeks to respond to emergencies either in their or adjacent counties. A majority of
 7 county commissions in a region may coordinate to call up the regimental headquarters in their
 8 region for up to one month to coordinate major responses to multi-county emergencies.

9 (d) County sheriffs may conduct an emergency call up to active duty of companies in their
 10 county for 48 hours to respond to emergencies either in their or adjacent counties. Periods
 11 beyond 48 hours must be approved by the county commission. County sheriffs will exercise
 12 principal authority over State Guard elements in their county when these are activated. County
 13 sheriffs may deputize State Guard units or members to provide assistance to law enforcement,
 14 facilitate security and traffic control, protect facilities, and screen travelers near designated areas..

15 (e) Periods beyond one month of active duty for state guard units must be approved by the
 16 state legislature.

NOTE: The purpose of this bill is to revise and update the provisions of state code relating to all aspects of the West Virginia State Guard.

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