

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2892

BY DELEGATE HOWELL

INTRODUCED MARCH 03, 2021; REFERRED TO THE
COMMITTEE ON VETERANS' AFFAIRS AND HOMELAND
SECURITY THEN THE JUDICIARY

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, §15-4-10,
 2 and §15-4-11 of the Code of West Virginia, 1931, as amended, all relating to the West
 3 Virginia State Guard and the organization thereof; to adding additional directives for the
 4 West Virginia State Guard; adding a minimum age requirement; providing a federal clause
 5 for when there are potentially conflicting directives; modifying the oath; and modifying
 6 terms of enlistment.

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.

1 ~~Whenever any part of the National Guard of this state is in active federal service, the~~ The
 2 Governor is hereby ~~authorized~~ directed, as of July 1, 2021, to organize and maintain within this
 3 state ~~during such period,~~ under such regulations as the secretary of defense of the United States
 4 may prescribe for discipline in training, and under such regulations as the Adjutant General of this
 5 state shall deem necessary, such reserve military forces as the Governor may deem necessary
 6 to defend this state, maintain order, provide community service, and to respond to natural
 7 disasters and other declared emergencies, whenever the National Guard of this state and Air
 8 National Guard of this state shall be engaged in the active duty service of the United States,
 9 otherwise unavailable, or not available in sufficient numbers: *Provided,* That at no time shall the
 10 authorized numbers of such force be less than 5,000 persons. Such forces shall

11 (1) Be composed of officers commissioned or assigned, and such ~~able-bodied male~~
 12 citizens of the state over 16 years of age as shall volunteer for service therein, supplemented, if
 13 necessary, by ~~men~~ of the reserve militia enrolled by draft or otherwise as provided by law:
 14 *Provided,* That a position in or membership in such force is not considered to be a civil office or
 15 emolument. Former reserve and active duty military personnel, including those who have served
 16 in the Coast Guard Auxiliary and Civil Air Patrol, shall retain their rank; ~~Such forces shall~~

17 (2) Be ~~additional~~ in addition to and distinct from the National Guard and shall be known as

18 the "West Virginia State Guard": *Provided*, That any funds appropriated by the Legislature to the
 19 Adjutant General for the organization, administration, training and supply of the organized militia
 20 may be expended for such purposes with respect to the West Virginia State Guard. ~~Such forces~~
 21 shall and;

22 (3) Be uniformed, in a uniform distinct from the National Guard, and properly equipped to
 23 perform all required duties.

§15-4-2. Rules and regulations.

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 deems practicable and desirable, shall conform, in so far as is practical, to existing
 5 law governing and pertaining to the National Guard and the rules and regulations promulgated
 6 thereunder. ~~and shall prohibit the acceptance of gifts, donations, gratuities or anything of value~~
 7 ~~by such forces or by any member of such forces from any individual, firm, association, or~~
 8 ~~corporation by reason of such membership~~

§15-4-3. Pay and allowances.

1 ~~The pay for officers~~ Officers and enlisted ~~men~~ personnel of the West Virginia State Guard
 2 shall receive no compensation for their time for service at camps of instruction, rifle practice,
 3 practice marches and maneuvers, or other duties ordered by the Governor, ~~shall be such as are~~
 4 ~~provided~~ except where such is required by federal law or provided for in the National Defense Act
 5 or amendments thereto. Officers and enlisted ~~men~~ personnel, when called to duty and employed
 6 in the actual service of the state, as defined and provided in this article, beginning on the day they
 7 assembled at their armories or other designated places, until the day they have returned thereto
 8 and been properly relieved, inclusive, fractional parts of a day counting as a full day, shall receive
 9 the same pay and allowances as provided for officers and enlisted men in the West Virginia
 10 National Guard.

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

1 For the use of such forces, the Governor is hereby authorized to requisition from the
 2 secretary of ~~war~~ defense such arms and equipment as may be in possession of and can be spared
 3 by the ~~war~~ department of defense; and to make available to such forces the facilities of state
 4 armories and their equipment and such other state premises and property as may be available.
 5 Additionally, arms and sidearms may be privately purchased and utilized by members of the State
 6 Guard if such arms conform to the standards of the State Guard and the member has been trained
 7 and certified as proficient in the use of such arms to the standards of the State Guard.

§15-4-5. Service limited to state, except as to fresh pursuit; apprehension of persons in another state.

1 Such forces shall not be required to serve outside the boundaries of this state: ~~Except~~
 2 Provided, That any organization, unit or detachment of such forces, upon order of the officer in
 3 immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs,
 4 enemies or enemy forces beyond the borders of this state into another state until they are
 5 apprehended or captured by such organization, unit or detachment or until the military or police
 6 forces of the other state, or the forces of the United States, have had a reasonable opportunity to
 7 take up the pursuit or apprehend or capture such persons: *Provided, however*, That such other
 8 state shall have given authority by law or proclamation for such pursuit by such forces of this
 9 state. Any such person who shall be apprehended or captured in such other state by an
 10 organization, unit or detachment of the forces of this state shall, without unnecessary delay, be
 11 surrendered to the military or police forces of the state in which he or she is taken or to those of
 12 the United States, but such surrender shall not constitute a waiver by this state of its right to
 13 extradite or prosecute such person for any crime committed in this state.

§15-4-6. Pursuit and apprehension of certain persons in this state by military forces of another state.

1 Any military forces or organization, unit or detachment thereof, of another state, who are

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

§15-4-10. Oath of officers.

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~~ as follows "I, [name], do solemnly swear (or affirm) that I will support
 4 and defend the Constitution of the United States and the Constitution of the State of West Virginia
 5 against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;
 6 that I will obey the lawful orders of the Governor of the State of West Virginia; that I take this
 7 obligation freely, without any mental reservation or purpose of evasion; and that I will well and
 8 faithfully discharge the duties of the Office of [grade] in the West Virginia State Guard on which I
 9 am about to enter, so help me God."

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

1 No person shall be enlisted for more than one year but such enlistment may be renewed.
 2 The oath to be taken upon enlistment in such forces shall be ~~substantially in the form prescribed~~
 3 ~~for enlisted men of the National Guard, substituting the words "West Virginia State Guard" where~~
 4 ~~necessary~~ as follows: "I do hereby acknowledge to have voluntarily enlisted this ___ day of ___,

5 , in the West Virginia State Guard for a period of year(s) under the conditions prescribed by
6 law, unless sooner discharged by proper authority. I, , do solemnly swear (or affirm)
7 that I will support and defend the Constitution of the United States and of the State of West Virginia
8 against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;
9 and that I will obey the orders of the Governor of the State of West Virginia and the orders of the
10 officers appointed over me, according to law and regulations. So help me God.”

NOTE: The purpose of this bill is to renew the functioning of the West Virginia State Guard and to provide legal authority for its operations and use.

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