

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 829

BY SENATOR RUCKER

[Reported March 25, 2025, from the Committee on
Government Organization]

1 A BILL to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended, relating
2 to clarifying the declaration of a state of preparedness; alleviating the two classes of state
3 of preparedness for simplicity; and providing one level of a state of preparedness similar
4 to having only one level for a state of emergency.

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
4 hereunder may not be construed to suspend or supersede any provision of the United States
5 Constitution or 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
9 of a state of emergency, ~~as defined in this article~~ exist, and that the health, safety, and welfare of
10 the inhabitants of this state require an invocation of the provisions of this section. ~~Provided, That~~

11 (1) A gubernatorially proclaimed state of emergency expires 60 days after issuance of the
12 executive order unless, prior to the 60th day, the Legislature adopts a concurrent resolution
13 extending the state of emergency beyond 60 days. A concurrent resolution adopted by the
14 Legislature to extend a state of emergency proclaimed by the Governor shall set forth within its
15 terms the length of time for which the state of emergency shall be extended.

16 (2) A state of emergency, whether proclaimed by the Governor or by the Legislature,
17 terminates upon the issuance of a proclamation of termination by the Governor, or the passage
18 by the Legislature of a concurrent resolution terminating the state 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~~

27 (1) A gubernatorially proclaimed ~~Class I~~ state of preparedness expires 30 days after
28 issuance of the executive order unless, prior to the 30th day, the Legislature adopts a concurrent
29 resolution extending the state of preparedness beyond 30 days. A concurrent resolution adopted
30 by the Legislature to extend a ~~Class I~~ state of preparedness proclaimed by the governor shall set
31 forth within its terms the length of time for which the state of preparedness shall be extended.

32 (2) A ~~Class II~~ state of preparedness, whether proclaimed by the Governor or by the
33 Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or
34 the passage by the Legislature of a concurrent resolution terminating the ~~Class II~~ state of
35 preparedness.

36 (d) When a state of emergency follows a state of preparedness involving the same or
37 substantially similar circumstances, the total time allotted for the duration of the two combined
38 ~~shall be no more than~~ may not exceed 90 days, unless the Governor follows the requirements for
39 extending the state of emergency under subsection (b) of this section.

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

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

(2) A designation of the geographic area threatened.

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

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

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

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

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

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

70 (5) To provide and compel the evacuation of all or part of the population from any stricken
71 or threatened area within the state and to take steps that are necessary for the receipt and care
72 of the evacuees;

73 (6) To control ingress and egress into or out of a disaster area or other area subject to a
74 state of emergency or state of preparedness, as well as the movement of persons and occupancy
75 of premises within the area;

76 (7) To suspend the provisions of any statute prescribing the procedures for the conduct of
77 state business or the orders, or rules of any state agency, if strict compliance therewith would in
78 any way prevent, hinder, or delay necessary action in coping with the emergency. ~~Provided, That~~
79 ~~nothing in~~ This subdivision may not be construed as ~~granting to grant~~ the Governor the power to
80 suspend any provision of this section;

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

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

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

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

90 (h) The declaration of a state of preparedness has the same effect as a declaration of a
91 state of emergency for the purposes of the Emergency Management Assistance Compact

established in §15-5-22 of this code, and the Statewide Mutual Aid System set forth in §15-5-28 of this code.

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

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

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

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

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

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

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