

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 829

By Senator Rucker

[Introduced March 20, 2025; referred
to 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 to
 2 clarifying the declaration of a state of preparedness; alleviating the two classes of state of
 3 preparedness for simplicity; and providing one level of a state of preparedness similar to
 4 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 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to clarify the declaration of a state of preparedness by executive order of the Governor or by concurrent resolution of the Legislature to alleviate the two classes of state of preparedness for simplicity and have one level of a state of preparedness similar to having only one level for a state of emergency.

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