WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2471

(By Mr. Speaker (Mr. Thompson) and Delegates Boggs, Swartzmiller, Miley, Young, Sponaugle and Barrett)

Passed April 9, 2013

In effect ninety days from passage.
AN ACT to amend and reenact §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, all relating to exercise of restricted state and local authority during a declared state of emergency; possession of firearms during a declared state of emergency; prohibiting the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency; clarifying scope of right to seize or confiscate otherwise lawfully-possessed firearm during a declared state of emergency; providing exceptions thereto; providing a remedy at law and equity for a
violations of this article for the improper seizure of firearms or ammunition during a declared state of emergency; providing a cause of action for the return of the ammunition and firearms seized in violation of these proscriptions; establishing a venue for actions; and providing for the award of costs and attorney fees to a prevailing plaintiff.

Be it enacted by the Legislature of West Virginia:

That §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


The provisions of this section shall be operative only during the existence of a state of emergency. The existence of a state of emergency may be proclaimed by the Governor or by concurrent resolution of the Legislature if the Governor in such proclamation, or the Legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural or man-made disaster of major proportions has actually occurred or is imminent within the state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the Legislature of a concurrent resolution terminating such emergency.

So long as such state of emergency exists, the Governor shall have and may exercise the following additional emergency powers:

(a) 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 forces and helpers in the state;
(b) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to emergency services on such terms and conditions as he or she shall prescribe and without regard to the limitations of any existing law and to account to the State Treasurer for any funds received for such property;

(c) To procure materials and facilities for emergency services by purchase, condemnation under the provisions of chapter fifty-four of this code or seizure pending institution of condemnation proceedings within thirty days from the seizing thereof and to construct, lease, transport, store, maintain, renovate or distribute such materials and facilities. Compensation for property so procured shall be made in the manner provided in chapter fifty-four of this code;

(d) To obtain the services of necessary personnel, required during the emergency, and to compensate them for their services from his or her contingent funds or such other funds as may be available to him or her;

(e) To provide and compel the evacuation of all or part of the population from any stricken or threatened area within the state and to take such steps as are necessary for the receipt and care of such evacuees;

(f) To control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;

(g) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency;

(h) To utilize such available resources of the state and of its political subdivisions as are reasonably necessary to cope with the emergency;
54 (i) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives and combustibles;
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56 (j) To make provision for the availability and use of temporary emergency housing; and
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58 (k) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.
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60 No powers granted under this section may be interpreted to authorize any action that would violate the prohibitions of section nineteen-a of this article.
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§15-5-19a. Possession of firearms during a declared state of emergency.
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2 (a) No person acting on behalf or under the authority of the state or a political subdivision of the state may do any of the following during any federal or state declared state of emergency:
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4 (1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition;
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6 (2) Seize, confiscate, or authorize the seizure or confiscation of any otherwise lawfully-possessed firearm or ammunition unless:
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8 (A) The person acting on behalf of or under the authority of the state or political subdivision is:
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10 (i) Defending himself or another from an assault; or,
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12 (ii) Arresting a person in actual possession of a firearm or ammunition for a violation of law; or,
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14 (B) The firearm or ammunition is being seized or confiscated as evidence of a crime; or,
(3) Require registration of any firearm or ammunition.

(b) The prohibitions of subsection (a)(1) do not prohibit the state or an authorized state or local authority from ordering and enforcing an evacuation or general closure of businesses in the affected area during a declared state of emergency.

(c) Any individual aggrieved by a violation of this section may seek relief in an action at law or in equity for redress against any person who subjects such individual, or causes such individual to be subjected, to an action prohibited by this section.

(d) In addition to any other remedy at law or in equity, an individual aggrieved by the seizure or confiscation of a firearm or ammunition in violation of this section may bring an action for the return of such firearm or ammunition in the circuit court of the county in which that individual resides or in which such firearm or ammunition is located.

(e) In any action or proceeding to enforce this section, the court shall award a prevailing plaintiff costs and reasonable attorney fees.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 3rd day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 25 2013

Time 11:40 am