

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Enrolled**

## **Senate Bill 128**

By Senators Smith, Tarr, Azinger, Roberts, Deeds,

Boley, Rucker, Taylor, Karnes, and Woodrum

[Passed February 23, 2023; in effect from passage]

1 AN ACT to amend and reenact §15-5-2 and §15-5-6 of the Code of West Virginia, 1931, as  
2 amended, all relating to states of emergency and preparedness; defining terms; clarifying  
3 the authority of the Governor and the Legislature to proclaim or declare states of  
4 emergency and preparedness; creating two classes of states of preparedness and  
5 establishing the criteria therefor; establishing the initial duration of gubernatorially  
6 proclaimed states of emergency and preparedness and the requirements for extending  
7 same; expanding and clarifying the powers of the Governor as to what he or she may order  
8 under proclamations of states of emergency and preparedness; expressly limiting the  
9 Governor's authority to order certain actions in an executive order issued pursuant to a  
10 proclamation or declaration of a state of emergency or preparedness; clarifying that the  
11 declaration of a state of preparedness has the same effect as a declaration of a state of  
12 emergency for the purposes of the Emergency Management Assistance Compact and the  
13 Statewide Mutual Aid System; and stating that the powers granted as to orders issued  
14 under states of emergency do not include the authority to limit the lawful possession and  
15 use of firearms and ammunitions.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

**§15-5-2. Definitions.**

1 As used in this article:

2 (1) "Board" means the West Virginia Disaster Recovery Board created by this article;

3 (2) "Code" means the Code of West Virginia, 1931, as amended;

4 (3) "Community facilities" means a specific work, or improvement within this state or a  
5 specific item of equipment or tangible personal property owned or operated by any political  
6 subdivision or nonprofit corporation and used within this state to provide any essential service to  
7 the general public;

8           (4) "Critical infrastructure" includes any systems and assets, whether physical or virtual, so  
9 vital to the state that the incapacity or destruction of such systems and assets would have a  
10 debilitating impact on security, state economic security, state public health or safety, or any  
11 combination of those matters;

12           (5) "Disaster" means the occurrence or imminent threat of widespread or severe damage,  
13 injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including  
14 weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or  
15 other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other  
16 public calamity requiring emergency action;

17           (6) "Disaster recovery activities" means activities undertaken prior to, during or following a  
18 disaster to provide, or to participate in the provision of, critical infrastructure, emergency services,  
19 temporary housing, residential housing, essential business activities, and community facilities;

20           (7) "Emergency services" means the preparation for and the carrying out of all emergency  
21 functions, other than functions for which military forces are primarily responsible, to protect,  
22 respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and  
23 damage resulting from disasters or other event caused by flooding, terrorism, enemy attack,  
24 sabotage, or other natural or other man-made causes. These functions include, without limitation,  
25 critical infrastructure services, firefighting services, police services, medical and health services,  
26 communications, emergency telecommunications, radiological, chemical, and other special  
27 weapons defense, evacuation of persons from stricken areas, emergency welfare services,  
28 emergency transportation, existing or properly assigned functions of plant protection, temporary  
29 restoration of public utility services and other functions related to the health, safety, and welfare of  
30 the citizens of this state, together with all other activities necessary or incidental to the preparation  
31 for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as  
32 its occurrence and any power or authority exercisable on account of a disaster that may be  
33 exercised during the period when there is an imminent threat;

34 (8) "Essential business activities" means a specific work or improvement within this state  
35 or a specific item of equipment or tangible personal property used within this state by any person  
36 to provide any essential goods or critical infrastructure services determined by the authority to be  
37 necessary for continued operations during a disaster, state of emergency, or state of  
38 preparedness, and for recovery from a disaster;

39 (9) "Local organization for emergency services" means an organization created in  
40 accordance with the provisions of this article by state or local authority to perform local emergency  
41 services function functions;

42 (10) "Mobile support unit" means an organization for emergency services created in  
43 accordance with the provisions of this article by state or local authority to be dispatched by the  
44 Governor to supplement local organizations for emergency services in a stricken area;

45 (11) "Person" means any individual, corporation, voluntary organization or entity,  
46 partnership, firm, or other association, organization, or entity organized or existing under the laws  
47 of this or any other state or country;

48 (12) "Political subdivision" means any county or municipal corporation in this state;

49 (13) "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by  
50 this article;

51 (14) "Residential housing" means a specific work or improvement within this state  
52 undertaken primarily to provide dwelling accommodations, including the acquisition, construction  
53 or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but  
54 not limited to, facilities for temporary housing and emergency housing, and any other nonhousing  
55 facilities that are incidental or appurtenant thereto;

56 (15) "Secretary" means the Secretary of the West Virginia Department of Military Affairs  
57 and Homeland Security; and

58 (16) "State of emergency" means the duly proclaimed existence of conditions of disaster or  
59 other serious threat to the health or safety of persons and property within West Virginia, or a

60 specific geographic area thereof, including, but not limited to, an attack upon the state or the  
61 United States, a natural or man-made disaster of major proportions, a pandemic, or other large-  
62 scale threat beyond the capacity of local control;

63 (17) "State of preparedness" means the duly proclaimed authorization for:

64 (A) Specialized planning and preparation activities intended to minimize the anticipated  
65 effect of conditions constituting a state of emergency, as defined in this section, which, in the  
66 judgment of the Governor, are expected to commence within the next 30 days, or within a period of  
67 longer than 30 days if necessary to obtain funding or maintain compliance with federal or  
68 interjurisdictional requirements: *Provided*, That a state of preparedness which is duly proclaimed  
69 under such circumstances shall be referred to as a "Class I state of preparedness"; or

70 (B) Specialized planning and preparation activities intended to minimize, by use of any  
71 available and appropriate federal or state governmental resources, the anticipated impact of or  
72 anticipated threats caused by a planned or anticipated event of such large size or scope that it is  
73 beyond the capacity of local control, and which is scheduled to commence within the next 30 days,  
74 or within a period of time longer than 30 days if necessary to obtain funding or maintain  
75 compliance with federal or interjurisdictional requirements: *Provided*, That a state of preparedness  
76 which is duly proclaimed under such circumstances shall be referred to as a "Class II state of  
77 preparedness"; and

78 (18) "Temporary housing" means a specific work or improvement within this state  
79 undertaken primarily to provide dwelling accommodations, including the acquisition, construction  
80 or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or  
81 housing for victims of a disaster and such other nonhousing facilities that are incidental or  
82 appurtenant thereto.

**§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.