

1 **H. B. 2471**

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

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6 [Introduced February 15, 2013; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend and reenact §15-5-6 and §15-5-19a of the Code of
11 West Virginia, 1931, as amended, all relating to homeland
12 security and emergency management; emergency powers of
13 Governor; possession of firearms during a declared state of
14 emergency; prohibiting the restriction or otherwise lawful
15 possession, use, carrying, transfer, transportation, storage
16 or display of a firearm or ammunition during a declared state
17 of emergency; and providing a remedy at law and equity for a
18 violation of a person's rights, including award of costs and
19 attorney fees for a prevailing plaintiff.

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

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

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

24 **§15-5-6. Emergency powers of Governor.**

25 The provisions of this section shall be operative only during

1 the existence of a state of emergency. The existence of a state of
2 emergency may be proclaimed by the Governor or by concurrent
3 resolution of the Legislature if the Governor in such proclamation,
4 or the Legislature in such resolution, finds that an attack upon
5 the United States has occurred or is anticipated in the immediate
6 future, or that a natural or man-made disaster of major proportions
7 has actually occurred or is imminent within the state, and that the
8 safety and welfare of the inhabitants of this state require an
9 invocation of the provisions of this section. Any such emergency,
10 whether proclaimed by the Governor or by the Legislature, shall
11 terminate upon the proclamation of the termination thereof by the
12 Governor, or the passage by the Legislature of a concurrent
13 resolution terminating such emergency.

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

16 (a) To enforce all laws and rules ~~and regulations~~ relating to
17 the provision of emergency services and to assume direct
18 operational control of any or all emergency service forces and
19 helpers in the state;

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

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

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

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

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

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

1 (h) To utilize such available resources of the state and of
2 its political subdivisions as are reasonably necessary to cope with
3 the emergency;

4 (i) To suspend or limit the sale, dispensing or transportation
5 of alcoholic beverages, ~~firearms~~, explosives and combustibles;

6 (j) To make provision for the availability and use of
7 temporary emergency housing; and

8 (k) To perform and exercise such other functions, powers and
9 duties as are necessary to promote and secure the safety and
10 protection of the civilian population.

11 No powers granted under this section may be interpreted to
12 authorize. ~~the seizure or confiscation of a firearm from a person~~
13 ~~unless that firearm is unlawfully possessed or unlawfully carried~~
14 ~~by the person, or the person is otherwise engaged in a criminal act~~
15 any action that would violate the prohibitions of section nineteen-
16 a of this article.

17 **§15-5-19a. Possession of firearms during a declared state of**
18 **emergency.**

19 ~~No powers granted under this article to state or local~~
20 ~~authorities may be interpreted to authorize the seizure or~~
21 ~~confiscation of a firearm from a person during a declared state of~~
22 ~~emergency unless that firearm is unlawfully possessed or unlawfully~~
23 ~~carried by the person, or the person is otherwise engaged in a~~
24 ~~criminal act.~~

1 (a) No person acting on behalf or under the authority of the
2 state or a political subdivision of the state may do any of the
3 following during a declared state of emergency:

4 (1) Prohibit or restrict the otherwise lawful possession,
5 use, carrying, transfer, transportation, storage or display of a
6 firearm or ammunition;

7 (2) Seize, confiscate, or authorize the seizure or
8 confiscation of any otherwise lawfully-posessed firearm or
9 ammunition unless the person acting on behalf of, or under the
10 authority of the state, is defending himself or another from an
11 assault, arresting a person in actual possession of a firearm or
12 ammunition for a violation of law, or unless the firearm or
13 ammunition is being seized or confiscated as evidence of a crime;
14 or;

15 (3) Require registration of any firearm or ammunition.

16 (b) The prohibitions of subsection (a)(1) as they relate to
17 transfer do not apply to the commercial sale of firearms or
18 ammunition if an authorized authority has ordered an evacuation or
19 general closure of businesses in the affected area.

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

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

7 (e) In any action or proceeding to enforce this section, the
8 court shall award a prevailing plaintiff costs and reasonable
9 attorney fees.

NOTE: The purpose of this bill is to prohibit the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency under the emergency powers of Governor or by any political subdivision of the state during a declared state of emergency. The bill also provides a remedy at law and equity for a violation of a person's rights, including award of costs and attorney fees for a prevailing plaintiff.

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