

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2471**

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(BY MR. SPEAKER (MR. THOMPSON)  
AND DELEGATES BOGGS, SWARTZMILLER, MILEY,  
YOUNG, SPONAUGLE AND BARRETT)

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[Passed April 11, 2013; in effect ninety days from passage.]

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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.**

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

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

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

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

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

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

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

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

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

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

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

54 (i) To suspend or limit the sale, dispensing or transportation  
55 of alcoholic beverages, explosives and combustibles;

56 (j) To make provision for the availability and use of tempo-  
57 rary emergency housing; and

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

61 No powers granted under this section may be interpreted to  
62 authorize any action that would violate the prohibitions of  
63 section nineteen-a of this article.

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

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 any federal or state declared state of emer-  
4 gency:

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

8 (2) Seize, confiscate, or authorize the seizure or confiscation  
9 of any otherwise lawfully-possessed firearm or ammunition  
10 unless:

11 (A) The person acting on behalf of or under the authority of  
12 the state or political subdivision is:

13 (i) Defending himself or another from an assault; or,

14 (ii) Arresting a person in actual possession of a firearm or  
15 ammunition for a violation of law; or,

16 (B) The firearm or ammunition is being seized or confis-  
17 cated as evidence of a crime; or,

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

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

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

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

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



That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*

