

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 355

BY SENATORS TRUMP, STOLLINGS, AND IHLENFELD

[Introduced February 18, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended, relating
 2 to the emergency powers of the Governor; and providing that such emergency power shall
 3 be terminated by either the proclamation of the Governor or by the passage of a concurrent
 4 resolution by the Legislature terminating the state of emergency.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) The provisions of this section are operative only during the existence of a state of
 2 emergency or state of preparedness.

3 (b) State of emergency.

4 (1) The existence of a state of emergency or state of preparedness may be proclaimed by
 5 the Governor or by concurrent resolution of the Legislature if the Governor in the proclamation,
 6 or the Legislature in the resolution, finds that an attack upon the United States ~~has occurred or is~~
 7 ~~anticipated in the immediate future, or that~~ or a natural or man-made disaster of major proportions
 8 has actually occurred ~~or is imminent~~ within the state, or that an emergency exists ~~or may be~~
 9 ~~imminent~~ due to a large-scale threat beyond local control, and that the safety and welfare of the
 10 inhabitants of this state require an invocation of the provisions of this section.

11 (2) Any state of emergency, whether proclaimed by the Governor or by the Legislature,
 12 terminates upon the proclamation of the termination by the Governor, or the passage by the
 13 Legislature of a concurrent resolution terminating the state of emergency: *Provided, That any*
 14 executive orders declared by the Governor during the state of emergency shall terminate after 60
 15 days unless the Legislature has convened in a regular plenary session or in an extraordinary
 16 session for the purpose of addressing the state of emergency during such 60 days.

17 (c) State of preparedness.

18 (1) The existence of a ~~state of emergency~~ or state of preparedness may be proclaimed by
19 the Governor or by concurrent resolution of the Legislature if the Governor in the proclamation,
20 or the Legislature in the resolution, finds that an attack upon the United States has occurred ~~or is~~
21 ~~anticipated in the immediate future, or that~~ or a natural or man-made disaster of major proportions
22 has actually occurred or is imminent within the state, or that an emergency ~~exists or~~ may be
23 imminent due to a large-scale threat beyond local control, and that the safety and welfare of the
24 inhabitants of this state require an invocation of the provisions of this section.

25 ~~(b)~~ (2) Any ~~state of emergency~~ or state of preparedness, whether proclaimed by the
26 Governor or by the Legislature, terminates upon the proclamation of the termination by the
27 Governor, or the passage by the Legislature of a concurrent resolution terminating the ~~state of~~
28 ~~emergency~~ or state of preparedness: Provided, That in no case shall a state of preparedness last
29 longer than thirty days.

30 ~~(e)~~ (d) So long as a state of emergency or state of preparedness exists, the Governor has
31 and may exercise the following additional emergency powers:

32 (1) To enforce all laws and rules relating to the provision of emergency services and to
33 assume direct operational control of any or all emergency service forces and helpers in the state;

34 (2) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to
35 emergency services on terms and conditions he or she prescribes and without regard to the
36 limitations of any existing law and to account to the State Treasurer for any funds received for the
37 property;

38 (3) To procure materials and facilities for emergency services by purchase, condemnation
39 under the provisions of §54-1-1 *et seq.* of this code or seizure pending institution of condemnation
40 proceedings within 30 days from the seizing thereof and to construct, lease, transport, store,
41 maintain, renovate or distribute the materials and facilities. Compensation for property so
42 procured shall be made in the manner provided in §54-1-1 *et seq.* of this code;

43 (4) To obtain the services of necessary personnel, required during the emergency, and to

44 compensate them for their services from his or her contingent funds or other funds available to
45 him or her;

46 (5) To provide and compel the evacuation of all or part of the population from any stricken
47 or threatened area within the state and to take steps that are necessary for the receipt and care
48 of the evacuees;

49 (6) To control ingress and egress to and from a disaster area or an area where large-scale
50 threat exists, the movement of persons within the area and the occupancy of premises therein;

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

54 (8) To use available resources of the state and of its political subdivisions that are
55 reasonably necessary to cope with the emergency;

56 (9) To suspend or limit the sale, dispensing or transportation of alcoholic beverages,
57 explosives and combustibles;

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

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

61 ~~(d)~~ (e) The declaration of a state of preparedness has the same effect as a declaration of
62 a state of emergency for the purposes of the Emergency Management Assistance Compact
63 established in §15-5-22 and the Statewide Mutual Aid Systems set forth in §15-5-28.

64 ~~(e)~~ (f) The powers granted under this section do not authorize any action that would violate
65 the prohibitions of section nineteen-a of this article.

NOTE: The purpose of this bill is to allow a state of emergency to be terminated by either a proclamation of the Governor or by passage of a concurrent resolution by the legislature.

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