

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 568

BY SENATORS AZINGER AND KARNES

[Introduced March 5, 2021; referred
to the Committee on Government Organization; and
then 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; when the Governor may be required to convene
 3 a special session of the Legislature; defining actions of state government or political
 4 subdivisions that are prohibited during states of emergency; authorizing legal actions or
 5 actions in equity by persons or businesses aggrieved by governmental violations, together
 6 with the award of costs and fees to prevailing plaintiffs; and ending the mask mandate
 7 imposed by the Governor upon passage.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15. 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. The existence of a state of emergency or state of
 3 preparedness may be proclaimed by the Governor or by concurrent resolution of the Legislature
 4 if the Governor in the proclamation, or the Legislature in the resolution, finds that an attack upon
 5 the United States has occurred or is anticipated in the immediate future, or that a natural or man-
 6 made disaster of major proportions has actually occurred or is imminent within the state, or that
 7 an emergency exists or may be imminent due to a large-scale threat beyond local control, and
 8 that the safety and welfare of the inhabitants of this state require an invocation of the provisions
 9 of this section.

10 (b) Any state of emergency or state of preparedness, whether proclaimed by the Governor
 11 or by the Legislature, terminates upon the proclamation of the termination by the Governor, or the
 12 passage by the Legislature of a concurrent resolution terminating the state of emergency or state
 13 of preparedness: *Provided*, That in no case shall may a state of emergency or state of
 14 preparedness last longer than 30 days, unless the Governor convenes the Legislature for a

15 special session and the state of emergency or state of preparedness is extended for no more than
16 30 days and is approved by a majority of the Legislature.

17 (c) So long as a state of emergency or state of preparedness exists, the Governor ~~has~~
18 ~~and~~ may exercise the following additional emergency powers:

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

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

25 (3) To procure materials and facilities for emergency services by purchase, condemnation
26 under the provisions of Chapter 54 of this code or seizure pending institution of condemnation
27 proceedings within thirty days from the seizing thereof and to construct, lease, transport, store,
28 maintain, renovate, or distribute the materials and facilities. Compensation for property so
29 procured shall be made in the manner provided in Chapter 54 of this code;

30 (4) To obtain the services of necessary personnel, required during the emergency, and to
31 compensate them for their services from his or her contingent funds or other funds available to
32 him or her;

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

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

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

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

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

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

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

48 (d) The declaration of a state of preparedness has the same effect as a declaration of a
49 state of emergency for the purposes of the Emergency Management Assistance Compact
50 established in §15-5-22 of this code and the Statewide Mutual Aid Systems set forth in §15-5-28
51 of this code.

52 (e) The powers granted under this section do not authorize any action that would violate
53 the prohibitions of §15-5-19 of this code.

54 (f) No person acting on behalf or under the authority of the state or a political subdivision
55 of the state may do any of the following during any federal or state declared state of emergency:

56 (1) Prohibit or restrict the operation of any private businesses or their employees.

57 (2) Prohibit or restrict the operation of any religious entities, facilities, and groups or
58 religious gatherings.

59 (3) Prohibit or restrict the movement of citizens to and from private businesses,
60 residences, or religious entities.

61 (4) Prohibit social gatherings at private settings to include businesses, residences,
62 religious entities, or any other private locations.

63 (5) Violate the U.S. Constitution or the West Virginia Constitution.

64 (g) Any individual, business, or religious entity aggrieved by a violation of this subsection
65 may seek relief in an action at law or in equity for redress against any person who subjects an
66 individual, business, or religious entity, or causes such individual, business or religious entity to

67 be subjected, to an action prohibited by this subsection.

68 (h) In any action or proceeding to enforce subsection (f) of this section, the court shall
69 award a prevailing plaintiff costs and reasonable attorney fees.

70 (i) The mask mandate initiated by the Governor during the declared state of emergency
71 in 2020 shall be ended upon passage of this legislation.

NOTE: The purpose of this bill is to provide that Governor may be required to convene a special session of the Legislature during periods of security and emergency management. It defines actions of state government or political subdivisions that are prohibited during states of emergency; authorizes legal actions or actions in equity by persons or businesses aggrieved by violations, together with the award of costs and fees to prevailing plaintiffs; and ends the mask mandate initiated by the Governor in 2020.

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