

bill to strengthen the Emergency Powers Protection Act

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[Effective from passage]

11 A BILL to §15-5-6, §15-5-19a and §61-6-1a of the code of West
12 Virginia, 1931, as amended, all relating to prohibiting the
13 taking of lawfully possessed arms and ammunition during a
14 declared state of emergency or riot.

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

16 That §15-5-6, §15-5-19a and §61-6-1a of the code of West
17 Virginia, 1931, as amended, be amended and reenacted, all to
18 read as follows:

19 **CHAPTER 15. PUBLIC SAFETY.**

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

22 **§15-5-6. Emergency powers of governor.**

23 (a) The provisions of this section shall be operative only
24 during the existence of a state of emergency. The existence of a

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

14 (b) So long as such When a state of emergency exists
15 pursuant to subsection (a) of this section, the governor shall
16 have and may exercise the following additional emergency powers:

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

21 ~~(b)~~ (2) To sell, lend, lease, give, transfer or deliver
22 materials or perform functions relating to emergency services on
23 such terms and conditions as he or she shall prescribe and
24 without regard to the limitations of any existing law and to

1 account to the State Treasurer for any funds received for such
2 property;

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

11 ~~(d)~~ (4) To obtain the services of necessary personnel,
12 required during the emergency, and to compensate them for their
13 services from his or her contingent funds or such other funds as
14 may be available to him or her;

15 ~~(e)~~ (5) To provide and compel the evacuation of all or part
16 of the population from any stricken or threatened area within
17 the state and to take such steps as are necessary for the
18 receipt and care of such evacuees;

19 ~~(f)~~ (6) To control ingress and egress to and from a
20 disaster area, the movement of persons within the area and the
21 occupancy of premises therein;

22 ~~(g)~~ (7) To suspend the provisions of any regulatory statute
23 prescribing the procedures for conduct of state business or the
24 orders, rules or regulations of any state agency, if strict

1 compliance therewith would in any way prevent, hinder or delay
2 necessary action in coping with the emergency;

3 ~~(h)~~ (8) To utilize such available resources of the state
4 and of its political subdivisions as are reasonably necessary to
5 cope with the emergency;

6 ~~(i)~~ (9) To suspend or limit the sale, dispensing or
7 transportation of alcoholic beverages, ~~firearms~~, explosives and
8 combustibles;

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

11 ~~(k)~~ (11) To perform and exercise such other functions,
12 powers and duties as are necessary to promote and secure the
13 safety and protection of the civilian population.

14 (c) No powers granted under this section may be interpreted
15 to authorize the seizure or confiscation of a firearm from a
16 person unless that firearm is unlawfully possessed or unlawfully
17 carried by the person, or the person is otherwise engaged in a
18 criminal act.

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

21 Notwithstanding any provision of this article to the
22 contrary:

23 (a) No powers granted under this article to state or local
24 authorities may be interpreted to authorize the seizure or

1 confiscation of a firearm from a person during a declared state
2 of emergency unless that firearm is unlawfully possessed or
3 unlawfully carried by the person, or the person is otherwise
4 engaged in a criminal act; and

5 (b) This article does not authorize:

6 (1) Any prohibition or impairment of the otherwise lawful
7 possession of privately owned firearms or ammunition;

8 (2) Any prohibition on the carrying of handguns, either
9 openly or concealed, by any person licensed to carry concealed
10 handguns or authorized by the laws of this state to carry
11 concealed handguns without a license; or

12 (3) Any prohibition of the otherwise lawful carrying of any
13 firearm or acquisition of any firearm or ammunition, as
14 protected by an individual's right under the constitution of
15 this state to keep and bear arms for the defense of self,
16 family, home and state, and for lawful hunting and recreational
17 use.

18 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

19 **ARTICLE 6. CRIMES AGAINST THE PEACE.**

20 **§61-6-1a. Control of riots and unlawful assemblages.**

21 (a) Members of the department of public safety state
22 police, sheriffs and mayors, and those acting under their order,
23 may, when engaged in suppressing a riot, rout or unlawful
24 assemblage, cordon off any area or areas threatened by such

1 riot, rout or unlawful assemblage, and may take all actions
2 which are necessary and reasonable under the emergency to
3 restore law and order, and such actions may be, but are not
4 limited to, the following:

5 ~~(a)~~ (1) Prohibit the sale, offering for sale, dispensing,
6 furnishing or transportation of ~~firearms or other~~ dangerous
7 weapons other than firearms or ammunition, ~~ammunition~~, dynamite
8 or other dangerous explosives in, to or from such areas.

9 ~~(b)~~ (2) Prohibit the sale, offering for sale, dispensing,
10 furnishing or consumption of alcoholic beverages or
11 nonintoxicating beer in a public place in such areas, and
12 prohibit the transportation of alcoholic beverages or
13 nonintoxicating beer in, to or from such areas.

14 ~~(c)~~ (3) Impose curfews, as required, to control movement of
15 persons in, to and from such areas.

16 ~~(d)~~ (4) Enter a private dwelling or other building or other
17 private place in such areas when in fresh pursuit of a rioter,
18 when in search of a sniper who has fired upon a person from such
19 a dwelling or other building or place or when in search of
20 ~~firearms, other~~ dangerous weapons except firearms or ammunition,
21 ~~ammunition~~, dynamite or other dangerous explosives when there is
22 reason to believe that such items are stored in the said
23 dwelling, building or place and that they will be removed
24 therefrom before a search warrant could be obtained.

1 (b) No person ~~shall wilfully~~ may willfully fail to obey a
2 lawful order of any mayor, sheriff, deputy sheriff, municipal
3 police officer, member of the department of public safety, or
4 other officer, given pursuant to this section.

5 (c) Notwithstanding any provision of this section to the
6 contrary, this section shall not authorize:

7 (1) Any prohibition or impairment of the otherwise lawful
8 possession of privately owned firearms or ammunition;

9 (2) Any prohibition on the carrying of handguns, either
10 openly or concealed, by any person licensed to carry concealed
11 handguns or authorized by the laws of this state to carry
12 concealed handguns without a license; or

13 (3) Any prohibition of the otherwise lawful carrying of any
14 firearm or acquisition of any firearm or ammunition, as
15 protected by an individual's right under the constitution of
16 this state to keep and bear arms for the defense of self,
17 family, home and state, and for lawful hunting and recreational
18 use.

19 (d) Any person who violates ~~an~~ a lawful order given
20 pursuant to the authority of this section ~~shall be~~ is guilty of
21 a misdemeanor and, upon conviction thereof, shall be fined not
22 more than five hundred dollars, ~~or imprisoned~~ confined in the
23 county jail for not more than six months, or both ~~fined~~ and
24 ~~imprisoned~~.

bill to strengthen the Emergency Powers Protection Act

NOTE: The purpose of this bill is to strengthen the prohibition of the taking of lawfully-owned arms and ammunition in a declared state of emergency or riot.

Strike-throughs indicate language which would be eliminated; underscoring indicates new language which would be added.

This bill was proposed by Jim Mullins <jmullins@wvcdl.org>