

116TH CONGRESS
2D SESSION

S. 3902

To amend the Insurrection Act to curtail violations against the civil liberties of the people of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2020

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend the Insurrection Act to curtail violations against the civil liberties of the people of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Curtailing Insurrection
5 act Violations of Individuals’ Liberties Act” or the
6 “CIVIL Act”.

7 **SEC. 2. FEDERAL AID FOR STATE GOVERNMENTS.**

8 Section 251 of title 10, United States Code, is
9 amended to read as follows:

1 **“§ 251. Federal aid for State governments**

2 “(a) AUTHORITY.—Whenever there is an insurrection
3 in any State against its government, the President may,
4 upon the request of the governor of the State concerned,
5 call into Federal service such of the militia of the other
6 States, in the number requested by the governor of the
7 State concerned, and use such of the armed forces, as the
8 President considers necessary to suppress the insurrec-
9 tion.

10 “(b) CERTIFICATION TO CONGRESS.—The President
11 may not invoke the authority under this section unless the
12 President, the Secretary of Defense, and the Attorney
13 General certify to Congress that the governor of the State
14 concerned has requested the aid described in subsection
15 (a) to suppress an insurrection.”.

16 **SEC. 3. USE OF MILITIA AND ARMED FORCES TO ENFORCE**
17 **FEDERAL AUTHORITY.**

18 Section 252 of title 10, United States Code, is
19 amended to read as follows:

20 **“§ 252. Use of militia and armed forces to enforce**
21 **Federal authority**

22 “(a) AUTHORITY.—Whenever unlawful obstructions,
23 combinations, or assemblages, or rebellion against the au-
24 thority of the United States, make it impracticable to en-
25 force the laws of the United States in any State by the
26 ordinary course of judicial proceedings, the President may

1 call into Federal service such of the militia of any State,
2 and use such of the armed forces, as the President con-
3 sidered necessary to enforce those laws or to suppress the
4 rebellion.

5 “(b) CERTIFICATION TO CONGRESS.—

6 “(1) The President may not invoke the author-
7 ity under this section unless the President, the Sec-
8 retary of Defense, and the Attorney General certify
9 to Congress that the State concerned is unable or
10 unwilling to suppress an unlawful obstruction, com-
11 bination, or assemblage, or rebellion against the au-
12 thority of the United States described in subsection
13 (a).

14 “(2) A certification under paragraph (1) shall
15 include the following:

16 “(A) A description of the circumstances
17 necessitating the invocation of the authority
18 under this section.

19 “(B) Demonstrable evidence that the State
20 concerned is unable or unwilling to suppress
21 such unlawful obstruction, combination, or as-
22 semblage, or rebellion against the authority of
23 the United States, and a legal justification for
24 resorting to the authority under this section to
25 so suppress.

1 “(C) A description of the mission, scope,
2 and duration of use of members of the armed
3 forces under this section.”.

4 **SEC. 4. INTERFERENCE WITH STATE AND FEDERAL LAW.**

5 Section 253 of title 10, United States Code, is
6 amended to read as follows:

7 **“§ 253. Interference with State and Federal law**

8 “(a) **AUTHORITY.**—(1) The President, by using the
9 militia or the armed forces, or both, or by any other
10 means, shall take such measures as he considers necessary
11 to suppress, in a State, any insurrection, domestic vio-
12 lence, unlawful combination, or conspiracy, if it—

13 “(A) so hinders the execution of the laws of
14 that State, and of the United States within the
15 State, that any part or class of its people is deprived
16 of a right, privilege, immunity, or protection named
17 in the Constitution and secured by law, and the con-
18 stituted authorities of that State are unable, fail, or
19 refuse to protect that right, privilege, or immunity,
20 or to give that protection; or

21 “(B) opposes or obstructs the execution of the
22 Federal or State laws to protect the civil rights of
23 the people of the United States under the Constitu-
24 tion and impedes the course of justice under those
25 laws.

1 “(2) In any situation covered by paragraph (1)(A),
2 the State shall be considered to have denied the equal pro-
3 tection of the laws secured by the Constitution.

4 “(b) CERTIFICATION TO CONGRESS.—

5 “(1) The President may not invoke the author-
6 ity under this section unless the President, the Sec-
7 retary of Defense, and the Attorney General certify
8 to Congress that the State concerned is unable or
9 unwilling to suppress an insurrection, domestic vio-
10 lence, an unlawful combination, or a conspiracy de-
11 scribed in subsection (a).

12 “(2) A certification under paragraph (1) shall
13 include the following:

14 “(A) A description of the circumstances
15 necessitating the invocation of the authority
16 under this section.

17 “(B) Demonstrable evidence that the State
18 concerned is unable or unwilling to suppress
19 such insurrection, domestic violence, unlawful
20 combination, or conspiracy, and a legal jus-
21 tification for resorting to the authority under
22 this section to so suppress.

23 “(C) A description of the mission, scope,
24 and duration of use of members of the armed
25 forces under this section.”.

1 **SEC. 5. CONSULTATION WITH CONGRESS.**

2 (1) IN GENERAL.—Chapter 13 of title 10,
3 United States Code, is amended by adding at the
4 end the following new section:

5 **“§ 256. Consultation**

6 “The President, in every possible instance, shall con-
7 sult with Congress before invoking the authority under
8 section 251, 252, or 253.”.

9 (2) TECHNICAL AND CONFORMING AMEND-
10 MENT.—The table of sections at the beginning of
11 chapter 13 of title 10, United States Code, is
12 amended by adding at the end the following:

“256. Consultation.”.

13 **SEC. 6. TERMINATION AND EXTENSION OF AUTHORITY**
14 **UNDER THE INSURRECTION ACT.**

15 (a) IN GENERAL.—Chapter 13 of title 10, United
16 States Code, as amended by section 5, is further amended
17 by adding at the end the following new section:

18 **“§ 257. Termination of authority and expedited proce-**
19 **dures for extension by joint resolution of**
20 **Congress**

21 “(a) DEFINITIONS.—In this section:

22 “(1) 14-DAY PERIOD.—With respect to an invo-
23 cation of authority under section 251, 252, or 253,
24 the term ‘14-day period’ means, as applicable—

1 “(A) in the case of an invocation of au-
2 thority on a date on which Congress is in ses-
3 sion, the period beginning on the date on which
4 the President invokes such authority and end-
5 ing on the date that is 14 calendar days after
6 the date of such invocation; or

7 “(B) in the case of an invocation of au-
8 thority on a date on which Congress is ad-
9 journing, the period beginning on the date on
10 which the next session of Congress commences
11 and ending on the date that is 14 calendar days
12 after the date of such commencement.

13 “(2) JOINT RESOLUTION.—The term ‘joint res-
14 olution’ means a joint resolution—

15 “(A) that is introduced with respect to the
16 invocation of authority under section 251, 252,
17 or 253 during the 14-day period;

18 “(B) which does not have a preamble;

19 “(C) the title of which is as follows: ‘Joint
20 resolution relating to the extension of authority
21 for purposes of _____ of title 10, United
22 States Code’, the blank space being filled in
23 with whether the extension relates to the provi-
24 sion of Federal aid for State governments
25 under section 251, the use of militia and armed

1 forces to enforce Federal authority under sec-
2 tion 252, or the suppression of interference
3 with State and Federal law under section 253;
4 and

5 “(D) the matter after the resolving clause
6 of which is as follows: ‘That Congress extends
7 the authority to _____, invoked by the
8 President on _____ .’, the first blank
9 space being filled in with whether the extension
10 relates to the provision of Federal aid for State
11 governments, the use of militia and armed
12 forces to enforce Federal authority, or the sup-
13 pression of interference with State and Federal
14 law, and the second blank space being filled in
15 with the date on which the President invoked
16 such authority.

17 “(b) JOINT RESOLUTION ENACTED.—Notwith-
18 standing any other provision of this section, if, not later
19 than the last day of the 14-day period, there is enacted
20 into law a joint resolution, the period of such authority
21 shall be extended for a period to be determined by Con-
22 gress and expressed in the joint resolution.

23 “(c) JOINT RESOLUTION NOT ENACTED.—Notwith-
24 standing any other provision of this section, if a joint reso-

1 lution is not enacted on or before the last day of the 14-
2 day period—

3 “(1) such authority invoked by the President
4 shall terminate; and

5 “(2) the President may not, at any time after
6 the 14-day period, re-invoke authority under section
7 251, 252, or 253, unless there has been a material
8 and significant change in factual circumstances, and
9 such circumstances are provided in a new certifi-
10 cation to Congress.

11 “(d) EXPEDITED CONSIDERATION IN HOUSE OF
12 REPRESENTATIVES.—

13 “(1) RECONVENING.—Upon invocation by the
14 President of the authority under section 251, 252,
15 or 253, the Speaker of the House of Representa-
16 tives, if the House of Representatives would other-
17 wise be adjourned, shall notify the Members of the
18 House of Representatives that, pursuant to this sec-
19 tion, the House of Representatives shall convene not
20 later than 3 calendar days after the date of such in-
21 vocation.

22 “(2) REPORTING AND DISCHARGE.—Any com-
23 mittee of the House of Representatives to which a
24 joint resolution is referred shall report it to the
25 House of Representatives not later than 7 calendar

1 days after the last day of the 14-day period, there
2 is enacted into law a joint resolution. If a committee
3 fails to report the joint resolution within that period,
4 the committee shall be discharged from further con-
5 sideration of the joint resolution and the joint reso-
6 lution shall be referred to the appropriate calendar.

7 “(3) PROCEEDING TO CONSIDERATION.—

8 “(A) IN GENERAL.—After each committee
9 authorized to consider a joint resolution reports
10 it to the House of Representatives or has been
11 discharged from its consideration, it shall be in
12 order, not later than 7 calendar days after the
13 last day of the 14-day period, to move to pro-
14 ceed to consider the joint resolution in the
15 House of Representatives.

16 “(B) PROCEDURE.—For a motion to pro-
17 ceed to consider a joint resolution—

18 “(i) all points of order against the
19 motion are waived;

20 “(ii) such a motion shall not be in
21 order after the House of Representatives
22 has disposed of a motion to proceed on the
23 joint resolution;

1 “(iii) the previous question shall be
2 considered as ordered on the motion to its
3 adoption without intervening motion;

4 “(iv) the motion shall not be debat-
5 able; and

6 “(v) a motion to reconsider the vote
7 by which the motion is disposed of shall
8 not be in order.

9 “(4) CONSIDERATION.—If the House of Rep-
10 resentatives proceeds to consideration of a joint res-
11 olution—

12 “(A) the joint resolution shall be consid-
13 ered as read;

14 “(B) all points of order against the joint
15 resolution and against its consideration are
16 waived;

17 “(C) the previous question shall be consid-
18 ered as ordered on the joint resolution to its
19 passage without intervening motion except 10
20 hours of debate equally divided and controlled
21 by the proponent and an opponent;

22 “(D) an amendment to the joint resolution
23 shall not be in order; and

1 “(E) a motion to reconsider the vote on
2 passage of the joint resolution shall not be in
3 order.

4 “(e) EXPEDITED CONSIDERATION IN SENATE.—

5 “(1) RECONVENING.—Upon invocation by the
6 President of the authority under section 251, 252,
7 or 253, if the Senate has adjourned or recessed for
8 more than 2 calendar days, the majority leader of
9 the Senate, after consultation with the minority
10 leader of the Senate, shall notify the Members of the
11 Senate that, pursuant to this section, the Senate
12 shall convene not later than 3 calendar days after
13 the date of such invocation.

14 “(2) PLACEMENT ON CALENDAR.—Upon intro-
15 duction in the Senate, the joint resolution shall be
16 placed immediately on the calendar.

17 “(3) PROCEEDING TO CONSIDERATION.—

18 “(A) IN GENERAL.—Notwithstanding rule
19 XXII of the Standing Rules of the Senate, it is
20 in order, not later than 7 calendar days after
21 the last day of the 14-day period (even though
22 a previous motion to the same effect has been
23 disagreed to) to move to proceed to the consid-
24 eration of a joint resolution.

1 “(B) PROCEDURE.—For a motion to pro-
2 ceed to the consideration of a joint resolution—

3 “(i) all points of order against the
4 motion are waived;

5 “(ii) the motion is not debatable;

6 “(iii) the motion is not subject to a
7 motion to postpone;

8 “(iv) a motion to reconsider the vote
9 by which the motion is agreed to or dis-
10 agreed to shall not be in order; and

11 “(v) if the motion is agreed to, the
12 joint resolution shall remain the unfinished
13 business until disposed of.

14 “(4) FLOOR CONSIDERATION.—

15 “(A) IN GENERAL.—If the Senate proceeds
16 to consideration of a joint resolution—

17 “(i) all points of order against the
18 joint resolution (and against consideration
19 of the joint resolution) are waived;

20 “(ii) consideration of the joint resolu-
21 tion, and all debatable motions and appeals
22 in connection therewith, shall be limited to
23 not more than 10 hours, which shall be di-
24 vided equally between the majority and mi-
25 nority leaders or their designees;

1 “(iii) a motion further to limit debate
2 is in order and not debatable;

3 “(iv) an amendment to, a motion to
4 postpone, or a motion to commit the joint
5 resolution is not in order; and

6 “(v) a motion to proceed to the con-
7 sideration of other business is not in order.

8 “(B) VOTE ON PASSAGE.—The vote on
9 passage shall occur immediately following the
10 conclusion of the consideration of a joint resolu-
11 tion, and a single quorum call at the conclusion
12 of the debate if requested in accordance with
13 the rules of the Senate.

14 “(C) RULINGS OF THE CHAIR ON PROCE-
15 DURE.—Appeals from the decisions of the Chair
16 relating to the application of this subsection or
17 the rules of the Senate, as the case may be, to
18 the procedure relating to a joint resolution shall
19 be decided without debate.

20 “(f) RULES RELATING TO SENATE AND HOUSE OF
21 REPRESENTATIVES.—

22 “(1) COORDINATION WITH ACTION BY OTHER
23 HOUSE.—If, before the passage by one House of a
24 joint resolution of that House, that House receives
25 from the other House a joint resolution—

1 “(A) the joint resolution of the other
2 House shall not be referred to a committee; and

3 “(B) with respect to a joint resolution of
4 the House receiving the resolution—

5 “(i) the procedure in that House shall
6 be the same as if no joint resolution had
7 been received from the other House; and

8 “(ii) the vote on passage shall be on
9 the joint resolution of the other House.

10 “(2) TREATMENT OF JOINT RESOLUTION OF
11 OTHER HOUSE.—If one House fails to introduce or
12 consider a joint resolution under this subsection, the
13 joint resolution of the other House shall be entitled
14 to expedited floor procedures under this section.

15 “(3) TREATMENT OF COMPANION MEASURES.—
16 If, following passage of a joint resolution in the Sen-
17 ate, the Senate receives the companion measure
18 from the House of Representatives, the companion
19 measure shall not be debatable.

20 “(4) CONSIDERATION AFTER PASSAGE.—

21 “(A) PERIOD PENDING WITH PRESI-
22 DENT.—If Congress passes a joint resolution—

23 “(i) the period beginning on the date
24 on which the President is presented with
25 the joint resolution and ending on the date

1 on which the President signs, allows to be-
2 come law without signature, or vetoes and
3 returns the joint resolution (but excluding
4 days when either House is not in session)
5 shall be disregarded in determining wheth-
6 er the joint resolution was enacted before
7 the last day of the 14-day period; and

8 “(ii) the date that is the number of
9 days in the period described in clause (i)
10 after the 14-day period shall be substituted
11 for the 14-day period for purposes of sub-
12 sections (b) and (c).

13 “(B) VETOES.—If the President vetoes the
14 joint resolution, consideration of a veto message
15 in the Senate under this section shall be not
16 more than 2 hours equally divided between the
17 majority and minority leaders or their des-
18 ignees.

19 “(g) RULES OF HOUSE OF REPRESENTATIVES AND
20 SENATE.—Subsections (d) and (e) and paragraphs (1),
21 (2), (3), and (4)(B) of subsection (f) are enacted by Con-
22 gress—

23 “(1) as an exercise of the rulemaking power of
24 the Senate and House of Representatives, respec-
25 tively, and as such are deemed a part of the rules

1 of each House, respectively, but applicable only with
 2 respect to the procedure to be followed in that
 3 House in the case of a joint resolution, and super-
 4 sede other rules only to the extent that they are in-
 5 consistent with such rules; and

6 “(2) with full recognition of the constitutional
 7 right of either House to change the rules (so far as
 8 relating to the procedure of that House) at any time,
 9 in the same manner, and to the same extent as in
 10 the case of any other rule of that House.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 12 The table of sections at the beginning of chapter 13 of
 13 title 10, United States Code, as amended by section 5,
 14 is further amended by adding at the end the following:

“257. Termination of authority and expedited procedures for extension by joint
 resolution of Congress.”.

15 **SEC. 7. JUDICIAL REVIEW FOR INJURY RESULTING FROM**
 16 **USE OF THE ARMED FORCES UNDER THE IN-**
 17 **SURRECTION ACT.**

18 (a) IN GENERAL.—Chapter 13 of title 10, United
 19 States Code, as amended by section 6, is further amended
 20 by adding at the end the following new section:

21 **“§ 258. Judicial review**

22 “(a) IN GENERAL.—Notwithstanding, and without
 23 prejudice to, any other provision of law, any individual or
 24 entity (including a State or local government) that is in-

1 jured by, or has a credible fear of injury from, the use
2 of members of the armed forces under this chapter may
3 bring a civil action for declaratory or injunctive relief. In
4 any action under this section, the district court shall have
5 jurisdiction to decide any question of law or fact arising
6 under this chapter, including challenges to the legal basis
7 for members of the armed forces to be acting under this
8 chapter.

9 “(b) EXPEDITED CONSIDERATION.—It shall be the
10 duty of the applicable district court of the United States
11 and the Supreme Court of the United States to advance
12 on the docket and to expedite to the greatest possible ex-
13 tent the disposition of any matter brought under this sec-
14 tion.

15 “(c) APPEALS.—

16 “(1) IN GENERAL.—The Supreme Court of the
17 United States shall have jurisdiction of an appeal
18 from a final decision of a district court of the United
19 States in a civil action brought under this section.

20 “(2) FILING DEADLINE.—A party shall file an
21 appeal under paragraph (1) not later than 30 days
22 after the court issues a final decision under sub-
23 section (a).”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 The table of sections at the beginning of chapter 13 of

1 title 10, United States Code, as amended by section 6,
2 is further amended by adding at the end the following:

“258. Judicial review.”.

3 **SEC. 8. RESTRICTION ON DIRECT PARTICIPATION BY MILI-**
4 **TARY PERSONNEL.**

5 Section 275 of title 10, United States Code, is
6 amended to read as follows:

7 **“§ 275. Restriction on direct participation by military**
8 **personnel**

9 “(a) IN GENERAL.—No activity (including the provi-
10 sion of any equipment or facility or the assignment or de-
11 tail of any personnel) under this title shall include or per-
12 mit direct participation by a member of the Army, Navy,
13 Air Force, or Marine Corps in a search, seizure, arrest,
14 or other similar activity unless participation in such activ-
15 ity by such member is otherwise expressly authorized by
16 law.

17 “(b) REGULATIONS.—The Secretary of Defense shall
18 prescribe such regulations as may be necessary to ensure
19 compliance with subsection (a).”.

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