

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4175**

4 (By Delegates Skaff, Barrett, Mr. Speaker, Mr. Miley, Boggs,  
5 Hartman, White, Skinner, Lane, Ellem, Ireland and Pasdon)

6  
7 (Originating in the House Committee on Finance.)

8 [January 16, 2014]

9  
10 A BILL to amend and reenact §15-5-6 of the Code of West Virginia,  
11 1931, as amended, relating to providing emergency assistance  
12 to small businesses during existence of a state of emergency;  
13 authorizing promulgation of an emergency rule by Director of  
14 the Division of Homeland Security and Emergency Management, in  
15 consultation with the secretaries of the Department of  
16 Commerce and the Department of Revenue establishing the  
17 criteria under which assistance to small businesses may be  
18 provided; providing factors to be considered or required in  
19 establishing criteria; providing for recovery by the state for  
20 certain assistance.

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

22 That §15-5-6 of the Code of West Virginia, one thousand nine  
23 hundred thirty-one, as amended, be amended and reenacted to read as  
24 follows:

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

2 **§15-5-6. Emergency powers of Governor.**

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

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

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

22 (b) To sell, lend, lease, give, transfer or deliver materials  
23 or perform functions relating to emergency services on such terms  
24 and conditions as he or she shall prescribe and without regard to

1 the limitations of any existing law and to account to the State  
2 Treasurer for any funds received for such property;

3 (c) To procure materials and facilities for emergency services  
4 by purchase, condemnation under the provisions of chapter  
5 fifty-four of this code or seizure pending institution of  
6 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. Compensation  
9 for property so procured shall be made in the manner provided in  
10 chapter fifty-four of this code;

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

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

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

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

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

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

10 (k) To provide immediate emergency financial assistance to  
11 small businesses located in the areas of the state where the state  
12 of emergency is determined to exist as may be necessary and proper  
13 to promote the continuity of the local economy. For each emergency  
14 under this section, the Governor shall direct the Director of the  
15 Division of Homeland Security and Emergency Management, in  
16 consultation with the secretaries of the Department of Commerce and  
17 the Department of Revenue, to promulgate an emergency rule under  
18 article three, chapter twenty-nine-a of this code establishing the  
19 criteria under which the assistance to small businesses may be  
20 provided under the circumstances of the emergency. The factors to  
21 be considered in establishing the criteria shall include, but not  
22 be limited to:

23 (1) Determining the period of time during which assistance is  
24 available;

1       (2) Determining the nature of the losses for which assistance  
2 is available;

3       (3) Determining the types of small businesses that are  
4 eligible for the assistance when considering that only the most  
5 vulnerable of businesses should be eligible given the nature of the  
6 emergency and given the availability of insurance coverage;

7       (4) Determining the financial eligibility which each type of  
8 small business must meet to receive assistance and the  
9 documentation that must be submitted in support of an application  
10 for assistance, which financial eligibility shall be confirmed by  
11 the State Tax Division upon request made under the rule;

12       (5) Determining the maximum amount of assistance available for  
13 each individual small business;

14       (6) Determining the aggregate amount of assistance available  
15 for all small businesses for losses incurred as the result of the  
16 emergency;

17       (7) Determining the type or types of assistance that is made  
18 available, including but not limited to, grants, loans, the  
19 appropriate rate of return, if any, that should be assessed on any  
20 loan, deferral of payment of payroll taxes or consumer sales tax  
21 collections, or other types of assistance as may be directed by the  
22 Governor given the nature of the emergency;

23       (8) Designating the agencies responsible for administering the  
24 assistance made available under the rule;

1       (9) Providing requirements for recovery by the state for any  
2 assistance provided pursuant to a rule authorized by this section  
3 either by subrogation or by assignment of any right of the  
4 applicant for recovery against third parties held liable for  
5 damages incurred and arising out of the emergency; and

6       (10) Providing for the effective widespread dissemination of  
7 information about, and aid in processing applications for,  
8 financial assistance to small businesses under the rule.

9       (1) The state has the right of subrogation against any  
10 proceeds received by the recipient of assistance under any rule  
11 authorized by this section for losses incurred as the result of the  
12 emergency. At the time an application for assistance is made, the  
13 application shall include a statement that explains that the state  
14 has the right of subrogation against any proceeds received by the  
15 applicant for losses incurred as the result of the emergency and  
16 the legal implications of subrogation;

17       (m) Assignment of rights.-

18       (1) Submission of an application for assistance under any rule  
19 authorized by this section is, as a matter of law, an assignment of  
20 the right of the applicant or his or her legal representative to  
21 recover from third parties for causes of action available to the  
22 applicant arising from the emergency.

23       (2) At the time an application for assistance is made, the  
24 application shall include a statement that explains that the

1 applicant has assigned all of his or her rights to recovery from  
2 third parties for causes of action available to the applicant  
3 arising from the emergency and the legal implications of making  
4 this assignment.

5 (3) This section does not prevent the recipient or his or her  
6 legal representative from maintaining an action for injuries or  
7 damages sustained by the recipient against any third-party for  
8 causes of action available to the applicant arising from the  
9 emergency.

10 (4) The state shall be legally subrogated to the rights of the  
11 recipient against the third party.

12 (5) The state shall have a priority right to be paid first out  
13 of any assistance payments made to the applicant for any assistance  
14 authorized by any rule authorized by this section.

15 (6) A recipient is considered to have authorized all  
16 third-parties to release to the state information needed by the  
17 state to secure or enforce its rights as assignee under this  
18 subsection.

19 ~~(k)~~(n) To perform and exercise such other functions, powers  
20 and duties as are necessary to promote and secure the safety and  
21 protection of the civilian population.

22 No provision of this section abrogates any other right of  
23 action, whether in common law or otherwise, by or in behalf of the

1 state or its duly elected statewide constitutional officers or any  
2 other state official or agency, arising from the emergency.

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