

**H. B. 4175**

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

[Introduced January 15, 2014; referred to the  
Committee on Small Business, Entrepreneurship and Economic  
Development then Finance.]

A BILL to amend and reenact §15-5-6 of the Code of West Virginia,  
1931, as amended, relating to providing emergency assistance  
to small businesses during existence of a state of emergency;  
authorizing promulgation of an emergency rule by Director of  
the Division of Homeland Security and Emergency Management, in  
consultation with the secretaries of the Department of  
Commerce and the Department of Revenue establishing the  
criteria under which the assistance to small businesses may be  
provided; and providing factors to be considered in  
establishing the criteria.

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

That §15-5-6 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as 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) Establishing that the state has the right of subrogation  
24 against any proceeds received by the recipient of assistance under

1 the rule for losses incurred as the result of the emergency;

2 (2) Establishing that the state has a direct right of action  
3 to recover amounts provided to a recipient of assistance under the  
4 rule against parties responsible for an emergency precipitated by  
5 a man-made disaster;

6 (3) Establishing the period of time during which assistance is  
7 available;

8 (4) Determining the nature of the losses for which assistance  
9 is available;

10 (5) Determining the types of small businesses that are  
11 eligible for the assistance when considering that only the most  
12 vulnerable of businesses should be eligible given the nature of the  
13 emergency;

14 (6) Determining the financial eligibility which each type of  
15 small business must meet to receive assistance and the  
16 documentation that must be submitted in support of an application  
17 for assistance, which financial eligibility shall be confirmed by  
18 the State Tax Division upon request made under the rule;

19 (7) Determining the maximum amount of assistance available for  
20 each individual small business;

21 (8) Determining the aggregate amount of assistance available  
22 for all small businesses for losses incurred as the result of the  
23 emergency;

24 (9) Determining the type or types of assistance that is made

1 available, including but not limited to, grants, loans, the  
2 appropriate rate of return, if any, that should be assessed on any  
3 loan, deferral of payment of payroll taxes or consumer sales tax  
4 collections, or other types of assistance as may be directed by the  
5 Governor given the nature of the emergency;

6 (10) Designating the agencies responsible for administering  
7 the assistance made available under the rule; and

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

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

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

NOTE: The purpose of the bill is to provide immediate emergency financial assistance to small businesses located in the areas of the state where a state of emergency is determined to exist as may be necessary and proper to promote the continuity of the local economy.

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