

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1174

Short Title: Business Closure Compensation/Const. Amd. (Public)

Sponsors: Representative Bumgardner.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

May 26, 2020

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO AUTHORIZE
3 INVERSE CONDEMNATION BY A BUSINESS CLOSED BY ORDER OF THE
4 GOVERNOR OR A LOCAL GOVERNMENT DUE TO A STATE OF EMERGENCY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article I of the North Carolina Constitution is amended by adding a
7 new section to read:

8 "**Sec. 39. Right to inverse condemnation for business closed during state of emergency.**

9 (1) Cause of action. An order issued by the Governor or a unit of local government due
10 to a state of emergency declared by the Governor that requires a business to partially or
11 completely close is a public use. An owner of a business partially or completely closed as
12 described in this subsection may bring an action in the superior court of the county where the
13 business is located to compel the State or unit of local government to commence condemnation
14 proceedings and payment of just compensation for all of the following:

15 (a) Loss of income during, and for a reasonable period of time after, a temporary
16 partial or complete closure of the business that would not have occurred but
17 for compliance with the order described in this subsection.

18 (b) Loss of going concern, including the loss of real property, if the closure of the
19 business results in the owner going out of business and the owner would not
20 have gone out of business but for compliance with the order described in this
21 subsection.

22 (2) Burden of proof. The owner of the business has the burden of proving that the loss is
23 due to the order described in subsection (1) of this section and proving the amount of the
24 compensation for losses. An owner bringing an action under this section may petition the court
25 for reimbursement of reasonable costs and expenses, including reasonable attorney fees,
26 appraisal fees, and costs actually incurred in bringing the action.

27 (3) Limitation. A petition for just compensation brought under this section must be filed
28 within one year of the expiration of the order that resulted in the business closure.

29 (4) Implementation. The General Assembly may prescribe general laws to further define
30 and implement this section."

31 **SECTION 2.** The amendment set out in Section 1 of this act shall be submitted to
32 the qualified voters of the State at the general election held in 2020, which election shall be
33 conducted under the laws then governing elections in the State. The question to be used in the
34 voting systems and ballots shall be:

35 "[] FOR [] AGAINST



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1 Constitutional amendment to allow a business owner to bring an inverse
2 condemnation action if the owner's business is partially or completely closed by an order issued
3 by the Governor or a unit of local government due to a state of emergency declared by the
4 Governor."

5 **SECTION 3.** If a majority of votes cast on the question are in favor of the amendment
6 set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the
7 Secretary of State. The Secretary of State shall enroll the amendment so certified among the
8 permanent records of that office. The amendment set out in Section 1 of this act becomes
9 effective upon certification and applies to business closures on or after that date.

10 **SECTION 4.** This act is effective when it becomes law.