

Senate Bill No. 406

(By Senators Plymale and Jenkins)

[Introduced January 22, 2014; referred to the Committee on the
Judiciary.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5-30-1, §5-30-2,
12 §5-30-3, §5-30-4 and §5-30-5, all relating to state
13 recognition of Native American tribes; defining terms;
14 recognizing certain tribes by the state; establishing criteria
15 for state recognition of additional tribes; authorizing unique
16 trademarks for certain arts and crafts; prohibiting gambling;
17 and providing penalty for unauthorized use of trademark.

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

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new article, designated §5-30-1, §5-30-2,
21 §5-30-3, §5-30-4 and §5-30-5, all to read as follows:

**ARTICLE 30. WEST VIRGINIA NATIVE AMERICAN TRIBES UNIQUE
RECOGNITION, AUTHENTICATION AND LISTING ACT.**

1 §5-30-1. State Recognition of Native American Tribes.

2 (a) The Legislature of West Virginia finds that the
3 recognition by the state of Native American tribes is necessary to
4 protect and preserve the cultural heritage of certain citizens of
5 this state. State recognition of official tribes would permit
6 Native American citizens of West Virginia access to certain
7 educational opportunities, and certain economic development
8 assistance and would aid in the protection of certain unique
9 cultural activities.

10 (b) This article shall be known as the "West Virginia Native
11 American Tribes Unique Recognition, Authentication and Listing
12 Act".

13 (c) This article shall be liberally construed to encourage and
14 enhance state recognition of Native American Tribes where
15 recognized status is required to determine eligibility for
16 educational, cultural and economic development opportunities,
17 incentives and programs, including, but not limited to, applicable
18 programs, grants, awards and trademark recognition as required or
19 recognized pursuant to the Indian Arts and Crafts Act of 1990 and
20 the subsequent revisions to Public Law 101-644.

21 **§5-30-2. Definitions.**

22 (a) As used in this article:

23 (1) "Executive Director" means the executive director of the

1 Herbert Henderson Office of Minority Affairs as appointed by the
2 Governor pursuant to article twenty-nine of chapter five of this
3 code.

4 (2) "Indian" means an individual who:

5 (A) Is a member of an Indian tribe;

6 (B) Is certified as an Indian artisan by an Indian tribe; or

7 (C) Is a direct lineal descendant of a person listed on the
8 base roll of an Indian tribe, whether or not the individual
9 qualifies for membership in the Indian tribe; or

10 (D) Is a direct lineal descendant of a person listed on a
11 judgment fund distribution list, roll or census of Indians or other
12 document prepared and approved by the Secretary of the Interior or
13 his or her authorized representative, whether or not the judgment
14 fund distribution list, roll, census or document is used by an
15 Indian tribe to determine membership; or

16 (E) Is certified as a member of a recognized Indian Tribe by
17 an Indian Organization recognized by this state pursuant to the
18 provisions of this article.

19 (3) "Indian Organization" means the Native American Indian
20 Federation Incorporated, the Appalachian American Indians of West
21 Virginia Incorporated, or other nonprofit Native American
22 organization that:

23 (A) (i) Is chartered as a 501(c) (3) with the state in which the

1 organization is headquartered; (ii) is dedicated to preserving
2 Native American principles, traditions, culture, history, language
3 and arts; (iii) performs free genealogical research to verify that
4 an individual meets the definition of "Indian" as defined in this
5 article; and (iv) retains genealogical information collected on its
6 members; or

7 (B) Is recognized by a state legislative body as an Indian
8 Organization or group, in which a majority of its members are
9 recognized as Indians, or the organization is federally recognized
10 as an Indian organization.

11 (4) "Indian Tribe", "Native American Tribe", or "Tribe" means
12 any Native American Indian tribe, band, nation or other organized
13 group or community which:

14 (A) Is recognized by the United States Secretary of the
15 Interior; or

16 (B) Is recognized by any state in these United States as
17 enacted by Legislative action; or

18 (C) Is recognized by this state in, or is seeking recognition
19 pursuant to the provisions of this article.

20 (5) "Office" means the Herbert Henderson Office of Minority
21 Affairs pursuant to article twenty-nine of chapter five of this
22 code.

23 (6) "State Recognized Tribe" or "West Virginia Recognized

1 Tribe" means any Native American Indian tribe, band, nation or
2 other organized group or community as designated by this article or
3 as recognized in the initial enactment of this article or as
4 recognized pursuant to the provisions for recognition as proscribed
5 by this article.

6 (7) "Secretary" means the West Virginia Secretary of State.

7 (8) "Trademark", or "West Virginia Native American Trademark"
8 or "Native American Trademark" means any word, name, symbol, mark
9 or any combination thereof used by a person or tribe to identify
10 and distinguish a unique product, service or good, made or provided
11 exclusively in West Virginia by persons affiliated with or
12 belonging to any recognized tribe in this state. Notwithstanding
13 any other provisions of this code to the contrary and unless
14 otherwise specifically implied in connection with this article, the
15 term "trademark" does not reduce or restrict the authority of the
16 Secretary of State to issue such trademarks and require such
17 application and fees as required pursuant to the provisions of
18 article two, chapter forty-seven of this code.

19 **§5-30-3. Recognized Native American Tribes of West Virginia.**

20 (a) Upon enactment of this article the tribes and qualified
21 members of the tribes may be recognized as Native American tribes
22 of West Virginia and Native American peoples of West Virginia
23 including for, but not limited to, the purposes of:

1 (1) Establishing eligibility for various educational
2 opportunities, including, but not limited to, grants, loans and
3 scholarships;

4 (2) Establishing eligibility for various economic development
5 and other incentive programs including, but not limited to, grants,
6 loans and gifts;

7 (3) Establishing eligibility for the issuance and possession
8 of unique trademarks for certain arts and crafts; and

9 (4) Establishing eligibility for participation or affiliation
10 in any sanctioned or recognized activity including any activity
11 that may be established pursuant to this article.

12 (b) The following tribes shall be officially recognized as
13 Native American Tribes of West Virginia unless added to or removed
14 from this list pursuant to the provisions of this article:

15 (1) Adena;

16 (2) Cayuga;

17 (3) Cherokee;

18 (4) Conoy;

19 (5) Delaware;

20 (6) Iroquois, including Mingo, Oneida, Onondaga and Seneca;

21 (7) Ottawa;

22 (8) Shawnee;

23 (9) Sioux, including Blackfoot and Lakota;

- 1 (10) Susquehannock including Honniasont;
- 2 (11) Tutelo including Monacan and Saponi;
- 3 (12) Tuscarora;
- 4 (13) Uninh; and
- 5 (14) Wyandot.

6 (c) The following Indian organizations shall be officially
7 recognized as Native American Tribes of West Virginia:

- 8 (1) Native American Indian Federation Incorporated; and
- 9 (2) The Appalachian American Indians of West Virginia
10 Incorporated.

11 **§5-30-4. Application for recognition of tribes.**

12 (a) After the enactment of this article, Native American
13 Tribes may apply for and petition for recognition of additional
14 tribes as specified pursuant to this article:

15 (1) The burden of proof is on the petitioning group, not the
16 evaluators;

17 (2) The executive director may propose rules for legislative
18 approval in accordance with the provisions of article three,
19 chapter twenty-nine-a of this code for the purpose of requiring
20 forms and describing the process for the evaluation and approval of
21 Native American Tribes;

22 (3) The executive director shall review all requests for
23 recognition of Native American Tribes;

1 (4) The executive director shall propose state recognition of
2 Native American Tribes in the form of a rule, for legislative
3 approval in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code;

5 (5) The executive director may recommend approval of a request
6 for the recognition of a Native American Tribe or Native American
7 people, if:

8 (A) The tribe or people are recognized by another state or by
9 the United States Secretary of the Interior;

10 (B) The groups members have retained a specific Indian
11 identity through time;

12 (C) The group demonstrates descent from a historical Indian
13 group that lived within West Virginia's current boundaries at the
14 groups first contact with Europeans; or

15 (D) The group traces the continued existence within West
16 Virginia for four generations to the present.

17 (6) Criteria to be used in the evaluation of a request for
18 recognition includes:

19 (A) Affidavits from elderly group members that the group has
20 identified internally as "Indian";

21 (B) Affidavits by local area residents of descendants
22 testifying that the group or individual members identified
23 themselves as "Indian";

1 (C) Local, state or federal records that show the group or
2 individual members identified themselves as "Indian";

3 (D) Accounts by anthropologists that mention or describe the
4 group or individual members as "Indian" or by the name of the group
5 or individuals seeking recognition;

6 (E) Colonial, local, state or federal records that show the
7 group, or individual members of it were identified as Indian or as
8 their ancestral tribe;

9 (F) Documents evident of the formation of an organization,
10 corporation, school, church or institution that identified the
11 group as Indian or by the tribal name;

12 (G) Historical accounts including letters, reports, diaries or
13 other documentation describing encounters with the tribe;

14 (H) Letters or diaries from a government official describing
15 the group as Indian or by the tribal name;

16 (I) Treaties, resolutions, agreements or other governmental
17 records or correspondence pertaining to the groups lands or
18 activities, including any record of encroachment on the group's
19 lands or activities;

20 (J) Census records, tax records, land deeds, land patents,
21 plat books or other records mentioning the groups location, members
22 living nearby or otherwise describing community structures; and

23 (K) Genealogy records of any current member or living ancestor

1 appearing in public records as "Indian" or by group name.

2 (7) A petitioning group may be recognized if it has:

3 (A) A formally organized system of governance, with
4 established bylaws and with membership criteria restricting
5 membership to people proving genealogical descent from the historic
6 tribe or from a historic membership roll;

7 (B) A formal petition or letter of intent signed by a simple
8 majority of the members of the group seeking recognition; and

9 (C) Supporting documentation as described in this section.

10 (8) When the executive director approves a request to
11 recognize a Native American tribe, he or she shall include a
12 description of the application and documentation supporting the
13 approval in the annual report required pursuant to section one,
14 article twenty-six, chapter five of this code.

15 (9) A Native American Tribe may not be recognized until the
16 recognition is adopted by an Act of the Legislature or pursuant to
17 the provisions of this article.

18 **§5-30-5. Prohibiting gambling activity; unauthorized use of name**
19 **or trademark; and penalty.**

20 (a) Nothing in this article shall be construed to imply or
21 permit gambling, gaming as regulated by the West Virginia Lottery
22 Commission pursuant to the provisions of article twenty-two,
23 article twenty-two-a, article twenty-two-b or article twenty-two-

1 c, of chapter twenty-nine of this code.

2 (b) No person may use a trademark as issued pursuant to this
3 article nor hold themselves out to be a member of a recognized
4 tribe in this state unless the trademark or membership is
5 authorized and issued pursuant to the provisions of this article.

6 (c) A person engaging in unauthorized use of any trademark or
7 the unauthorized use of the name or reference to any recognized
8 Native American tribe of this state, is guilty of a misdemeanor
9 and, upon conviction thereof, shall be fined not more than \$2,500
10 or confined in a county or regional jail not more than six months,
11 or both fined and confined.

NOTE: The purpose of this bill is to create the West Virginia
Native American Tribes Unique Recognition, Authentication and
Listing Act.

This article is new; therefore, strike-throughs and
underscoring have been omitted.