

H. B. 2635

(By Delegates Rohrbach (By Request) and Morgan (By Request)

[Introduced February 6, 2015; referred to the

Committee on Government Organization then the Judiciary.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-30-1, §5-30-2, §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.

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

(a) The Legislature of West Virginia finds and declares that the recognition by the state of

1 Native American tribes is necessary to protect and preserve the cultural heritage of certain citizens
2 of this state. State recognition of official tribes would allow Native American citizens of West
3 Virginia access to certain educational opportunities, and certain economic development assistance
4 and would aid in the protection of certain unique cultural activities.

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

7 (c) This article should be liberally construed to encourage and enhance state recognition of
8 Native American Tribes where recognized status is required to determine eligibility for educational,
9 cultural and economic development opportunities, incentives and programs, including, but not
10 limited to, applicable programs, grants, awards and trademark recognition as required or recognized
11 pursuant to the Indian Arts and Crafts Act of 1990 and the subsequent revisions to Public Law 101-
12 644.

13 **§5-30-2. Definitions.**

14 (a) As used in this article:

15 (1) "Executive Director" means the Executive Director of the Herbert Henderson Office of
16 Minority Affairs as appointed by the Governor pursuant to article twenty-nine, chapter five of this
17 code.

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

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

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

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

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

5 (E) Is certified as a member of a recognized Indian tribe by an Indian Organization
6 recognized by this state pursuant to the provisions of this article.

7 (3) "Indian Organization" means the Native American Indian Federation Incorporated, the
8 Appalachian American Indians of West Virginia Incorporated, or other nonprofit Native American
9 organization that:

10 (A) Is chartered as a 501(c)(3) with the state in which the organization is headquartered;

11 (B) Is dedicated to preserving Native American principles, traditions, culture, history,
12 language and arts;

13 (C) Performs free genealogical research to verify that an individual meets the definition of
14 "Indian" as defined in this article; and

15 (D) Retains genealogical information collected on its members; or

16 (E) Is recognized by a state legislative body as an Indian Organization or group, in which a
17 majority of its members are recognized as Indians, or such organization is federally recognized as
18 an Indian Organization, shall be considered to have satisfied the requirements of this article.

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

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

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

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

3 (5) "Office" means the Herbert Henderson Office of Minority Affairs pursuant to article
4 twenty-nine, chapter five of this code.

5 (6) "State Recognized Tribe" or "West Virginia Recognized Tribe" means any Native
6 American Indian tribe, band, nation or other organized group or community as designated by this
7 article or as recognized in the initial enactment of this article or as recognized pursuant to the
8 provisions for recognition as proscribed by this article.

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

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

18 **§5-30-3. Recognized Native American Tribes of West Virginia.**

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

22 (1) Establishing eligibility for various educational opportunities, including, but not limited

1 to, grants, loans and scholarships;

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

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

6 (4) Establishing eligibility for participation or affiliation in any sanctioned or recognized
7 activity including as such may be established pursuant to this article.

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

10 (1) Adena;

11 (2) Cayuga;

12 (3) Cherokee;

13 (4) Conoy;

14 (5) Delaware;

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

16 (7) Ottawa;

17 (8) Shawnee;

18 (9) Sioux, including Blackfoot and Lakota;

19 (10) Susquehannock including Honniasont;

20 (11) Tutelo including Monacan and Saponi;

21 (12) Tuscarora;

22 (13) Uninh; and

1 (14) Wyandot.

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

4 (1) Native American Indian Federation Incorporated; and

5 (2) The Appalachian American Indians of West Virginia Incorporated.

6 **§5-30-4. Application for recognition of tribes.**

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

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

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

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

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

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

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

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

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

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

5 (6) Criteria to be used in the evaluation of a request for recognition may include:

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

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

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

12 (D) Accounts by anthropologists that mention or describe the group or individual members
13 as "Indian" or by the name of the group or individuals seeking such recognition;

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

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

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

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

22 (I) Treaties, resolutions, agreements or other governmental records or correspondence

1 pertaining to the groups lands or activities, including any record of encroachment on such lands or
2 activities;

3 (J) Census records, tax records, land deeds, land patents, plat books or other records
4 mentioning the groups location, members living nearby or otherwise describing such community
5 structures; and

6 (K) Genealogy records of any current member or living ancestor appearing in public records
7 as "Indian" or by group name.

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

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

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

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

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

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

20 **§5-30-5. Prohibiting gambling activity; unauthorized use of name or trademark; and penalty.**

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

1 article twenty-two-a, article twenty-two-b or article twenty-two-c of chapter twenty-nine of this code.

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

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