

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 623

BY SENATORS PLYMALE (BY REQUEST), WOELFEL (BY
REQUEST) AND FACEMIRE

[Introduced February 18, 2016;

Referred to the Committee on Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 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.

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

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

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

§5-30-2. Definitions.

1 (a) As used in this article:

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

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

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

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

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

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

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

16 (3) "Indian organization" means the Native American Indian Federation Incorporated, the
17 Appalachian American Indians of West Virginia Incorporated, or other nonprofit Native American
18 organization that:

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

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

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

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

25 (E) Is recognized by a state legislative body as an Indian Organization or group, in which

26 a majority of its members are recognized as Indians, or the organization is federally recognized
27 as an Indian Organization, shall be considered to have satisfied the requirements of this article.

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

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

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

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

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

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

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

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

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

1 (a) Upon enactment of this article the tribes and qualified members of the tribes may be
2 recognized as Native American Tribes of West Virginia and Native American peoples of West

3 Virginia including, but not limited to, the purposes of:

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

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

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

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

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

14 (1) Adena;

15 (2) Cayuga;

16 (3) Cherokee;

17 (4) Conoy;

18 (5) Delaware;

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

20 (7) Ottawa;

21 (8) Shawnee;

22 (9) Sioux, including Blackfoot and Lakota;

23 (10) Susquehannock including Honniasont;

24 (11) Tutelo including Monacan and Saponi;

25 (12) Tuscarora;

26 (13) Uninh; and

27 (14) Wyandot.

28 (c) The following Indian organizations shall be officially recognized as Native American

29 Tribes of West Virginia:

30 (1) Native American Indian Federation Incorporated; and

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

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

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

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

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

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

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

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

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

16 (B) The group's members have retained a specific Indian identity through time;

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

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

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

22 (A) Affidavits from elderly group members that the group has identified internally as

23 “Indian;”

24 (B) Affidavits by local area residents of descendants testifying that the group or individual
 25 members identified themselves as “Indian;”

26 (C) Local, state or federal records that show the group or individual members identified
 27 themselves as “Indian;”

28 (D) Accounts by anthropologists that mention or describe the group or individual members
 29 as “Indian” or by the name of the group or individuals seeking such recognition;

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

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

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

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

38 (I) Treaties, resolutions, agreements or other governmental records or correspondence
 39 pertaining to the groups lands or activities, including any record of encroachment on such lands
 40 or activities;

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

44 (K) Genealogy records of any current member or living ancestor appearing in public
 45 records as “Indian” or by group name.

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

47 (A) A formally organized system of governance, with established bylaws and with
 48 membership criteria restricting membership to people proving genealogical descent from the

49 historic tribe or from a historic membership roll;

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

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

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

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

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

1 (a) Nothing in this article implies or permits gambling or gaming as regulated by the West
2 Virginia Lottery Commission pursuant to the provisions of article twenty-two, article twenty-two-a,
3 article twenty-two-b or article twenty-two-c of chapter twenty-nine of this code.

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

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

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