

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 666

BY SENATOR TRUMP

[Introduced February 22, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §16-2-13a, all relating to
 3 local indoor smoking prohibitions; exempting certain veterans’ organizations and video
 4 lottery licenses from local indoor smoking prohibition; requiring veterans organization
 5 facilities and video lottery licenses allowing smoking to have nonsmoking areas; requiring
 6 posted notices smoking is allowed; requiring ventilation of smoking areas in video lottery
 7 facilities; and establishing a procedure for certain establishments to apply for exemption
 8 from local indoor smoking prohibition.

Be it enacted by the Legislature of West Virginia:

1 That §16-2-11 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that said code be amended by adding thereto a new section, designated §16-2-
 3 13a, all to read as follows:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-11. Local board of health; powers and duties; exemption of veterans’ organizations and active duty United States Military organizations from indoor smoking regulations.

1 (a) Each local board of health created, established and operated pursuant to the
 2 provisions of this article shall:

3 (1) Provide the following basic public health services and programs in accordance with
 4 state public health performance-based standards:

5 (i) Community health promotion including assessing and reporting community health
 6 needs to improve health status, facilitating community partnerships including identifying the
 7 community's priority health needs, mobilization of a community around identified priorities and
 8 monitoring the progress of community health education services;

9 (ii) Environmental health protection including the promoting and maintaining of clean and
 10 safe air, water, food and facilities and the administering of public health laws as specified by the

11 commissioner as to general sanitation, the sanitation of public drinking water, sewage and
12 wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

13 (iii) Communicable or reportable disease prevention and control including disease
14 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and
15 prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases,
16 HIV/AIDS, tuberculosis and other communicable and reportable diseases;

17 (2) Appoint a local health officer to serve at the will and pleasure of the local board of
18 health with approval of the commissioner;

19 (3) Submit a general plan of operation to the commissioner for approval, if it receives any
20 state or federal money for health purposes. This program plan shall be submitted annually and
21 comply with provisions of the local board of health standards administrative rule;

22 (4) Provide equipment and facilities for the local health department that are in compliance
23 with federal and state law;

24 (5) Permit the commissioner to act by and through it, as needed. The commissioner may
25 enforce all public health laws of this state, the rules and orders of the secretary, any county
26 commission orders or municipal ordinances of the board's service area relating to public health,
27 and the rules and orders of the local board within the service area of a local board. The
28 commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner,
29 a public health emergency exists or when the local board fails or refuses to enforce public health
30 laws and rules necessary to prevent and control the spread of a communicable or reportable
31 disease dangerous to the public health. The expenses incurred shall be charged against the
32 counties or municipalities concerned;

33 (6) Deposit all moneys and collected fees into an account designated for local board of
34 health purposes. The moneys for a municipal board of health shall be deposited with the municipal
35 treasury in the service area. The moneys for a county board of health shall be deposited with the
36 county treasury in the service area. The moneys for a combined local board of health shall be

37 deposited in an account as designated in the plan of combination: *Provided*, That nothing
38 contained in this subsection is intended to conflict with the provisions of article one, chapter
39 sixteen of this code;

40 (7) Submit vouchers or other instruments approved by the board and signed by the local
41 health officer or designated representative to the county or municipal treasurer for payment of
42 necessary and reasonable expenditures from the county or municipal public health funds:
43 *Provided*, That a combined local board of health shall draw upon its public health funds account
44 in the manner designated in the plan of combination;

45 (8) Participate in audits, be in compliance with tax procedures required by the state and
46 annually develop a budget for the next fiscal year;

47 (9) Perform public health duties assigned by order of a county commission or by municipal
48 ordinance consistent with state public health laws; and

49 (10) Enforce the public health laws of this state and any other laws of this state applicable
50 to the local board.

51 (b) Each local board of health created, established and operated pursuant to the
52 provisions of this article may:

53 (1) Provide primary care services, clinical and categorical programs, and enhanced public
54 health services;

55 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve
56 as needed and at the will and pleasure of the local board of health. Staff and any contractors
57 providing services to the board shall comply with applicable West Virginia certification and
58 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
59 Division of Personnel under section six, article ten, chapter twenty-nine of this code. However,
60 any local board of health may, in the alternative and with the consent and approval of the
61 appointing authority, establish and adopt a merit system for its eligible employees. The merit
62 system may be similar to the state merit system and may be established by the local board by its

63 order, subject to the approval of the appointing authority, adopting and making applicable to the
64 local health department all, or any portion of any order, rule, standard, or compensation rate in
65 effect in the state merit system as may be desired and as is properly applicable;

66 (3) Adopt and promulgate and from time to time propose and amend rules consistent with
67 state public health laws and the rules of the West Virginia State Department of Health and Human
68 Resources, that are necessary and proper for the protection of the general health of the service
69 area and the prevention of the introduction, propagation and spread of disease. All rules shall be
70 filed with the clerk of the county commission or the clerk or the recorder of the municipality or both
71 and shall be kept by the clerk or recording officer in a separate book as public records;

72 (4) Accept, receive and receipt for money or property from any federal, state or local
73 governmental agency, from any other public source or from any private source, to be used for
74 public health purposes or for the establishment or construction of public health facilities;

75 (5) Assess, charge and collect fees for permits and licenses for the provision of public
76 health services: *Provided*, That permits and licenses required for agricultural activities may not be
77 assessed, charged or collected: *Provided, however*, That a local board of health may assess,
78 charge and collect all of the expenses of inspection of the physical plant and facilities of any
79 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization
80 facilities are located outside this state but who sells or distributes in the state, or transports,
81 causes or permits to be transported into this state, milk or milk products for resale, use or
82 consumption in the state and in the service area of the local board of health. A local board of
83 health may not assess, charge and collect the expenses of inspection if the physical plant and
84 facilities are regularly inspected by another agency of this state or its governmental subdivisions
85 or by an agency of another state or its governmental subdivisions certified as an approved
86 inspection agency by the commissioner. No more than one local board of health may act as the
87 regular inspection agency of the physical plant and facilities; when two or more include an
88 inspection of the physical plant and facilities in a regular schedule, the commissioner shall

89 designate one as the regular inspection agency;

90 (6) Assess, charge and collect fees for services provided by the local health department:

91 *Provided*, That fees for services shall be submitted to and approved by the commissioner;

92 (7) Contract for payment with any municipality, county or board of education for the

93 provision of local health services or for the use of public health facilities. Any contract shall be in

94 writing and permit provision of services or use of facilities for a period not to exceed one fiscal

95 year. The written contract may include provisions for annual renewal by agreement of the parties;

96 and

97 (8) Retain and make available child safety car seats, collect rental and security deposit

98 fees for the expenses of retaining and making available child safety car seats, and conduct public

99 education activities concerning the use and preventing the misuse of child safety car seats:

100 *Provided*, That this subsection is not intended to conflict with the provisions of section forty-six,

101 article fifteen, chapter seventeen-c of this code: *Provided, however*, That any local board of health

102 offering a child safety car seat program or employee or agent of a local board of health is immune

103 from civil or criminal liability in any action relating to the improper use, malfunction or inadequate

104 maintenance of the child safety car seat and in any action relating to the improper placement,

105 maintenance or securing of a child in a child safety car seat.

106 (c) The local boards of health are charged with protecting the health and safety, as well

107 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the

108 Legislature for the benefit of local boards of health shall be used for provision of basic public

109 health services.

1 (d) Notwithstanding any other provision of this article, a veteran's organization that is

2 exempt from federal income tax under Section 501(c)(19) of the Internal Revenue Code is exempt

3 from rules restricting smoking in indoor spaces which are adopted, promulgated or enforced by

4 local boards of health, as long as the area where smoking is permitted is restricted to persons

5 age eighteen years or older: *Provided*, That each entrance to the facility shall have posted a sign

6 of no less than eighteen inches by twenty-four inches, which says “DANGER: THESE PREMISES
7 CONTAIN TOBACCO SMOKE.”

§16-2-13a. Requiring certain facilities to provide for smoking and nonsmoking sections.

1 (a) Notwithstanding any provision of law to the contrary, any operational veteran’s
2 organization exempt from federal income tax under section 501(c)(19) of the Internal Revenue
3 Code or any facility holding a valid video lottery license granted by the West Virginia Lottery
4 Commission pursuant to article twenty-two-a, chapter twenty-nine of the code may allow smoking
5 in the facility, but shall provide smoking and nonsmoking sections if smoking is allowed: *Provided,*
6 That if the facility allows smoking then each entrance to the facility shall have posted a sign of no
7 less than eighteen inches by twenty-four inches, which says “DANGER: THESE PREMISES
8 CONTAIN TOBACCO SMOKE.”

9 (b) A facility holding a valid video lottery license granted by the West Virginia Lottery
10 Commission pursuant to article twenty-two-a, chapter twenty-nine of this code must have:

11 (1) A permanent ventilation system that ensures a minimum air exchange of six times per
12 hour throughout the indoor space and a minimum air exchange of twelve times per hour in the
13 indoor space that serves food, unless the food space is designated nonsmoking;

14 (2) A smoking area restricted to persons twenty-one years of age or older; and

15 (3) At least ten percent of the indoor space of the area designated a nonsmoking area.

NOTE: The purpose of this bill is to exempt certain veterans’ organizations and video lottery licenses from local indoor smoking prohibition. The bill requires veteran’s organization facilities and video lottery licenses allowing smoking to have nonsmoking areas to post notices smoking is allowed. The bill requires ventilation of smoking areas in video lottery facilities. The bill also establishes a procedure for certain establishments to apply for exemption from local indoor smoking prohibition.

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