

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2961

BY DELEGATES FAST, C. MARTIN, FOSTER, MANDT AND

BUTLER

[Introduced February 11, 2019; Referred
to the Committee on Technology and Infrastructure
then Government Organization.]

1 A BILL to amend and reenact §16-1-4, 16-1-9, and §16-1-9a of the Code of West Virginia, 1931,
 2 as amended, all relating to permitting the commissioner to require a water supply system
 3 be equipped with a backflow prevention assembly; requiring the appropriate water utility
 4 to install the backflow prevention assembly at the meter; requiring the appropriate water
 5 utility to maintain the backflow prevention assembly; and requiring the water utility to
 6 provide information relating to maintenance and necessity for any backflow prevention
 7 assembly.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with the provisions of §29A-3-1 *et seq*
 2 of this code that are necessary and proper to effectuate the purposes of this chapter. The
 3 secretary may appoint or designate advisory councils of professionals in the areas of hospitals,
 4 nursing homes, barbers and beauticians, postmortem examinations, mental health and
 5 intellectual disability centers and any other areas necessary to advise the secretary on rules.

6 (b) The rules may include, but are not limited to, the regulation of:

7 (1) Land usage endangering the public health: *Provided*, That no rules may be
 8 promulgated or enforced restricting the subdivision or development of any parcel of land within
 9 which the individual tracts, lots or parcels exceed two acres each in total surface area and which
 10 individual tracts, lots or parcels have an average frontage of not less than 150 feet even though
 11 the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area,
 12 and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding
 13 the provisions of this subsection, nothing in this section may be construed to abate the authority
 14 of the department to:

15 (A) Restrict the subdivision or development of a tract for any more intense or higher density
 16 occupancy than a single-family dwelling unit;

17 (B) Propose or enforce rules applicable to single-family dwelling units for single-family
18 dwelling unit sanitary sewerage disposal systems; or

19 (C) Restrict any subdivision or development which might endanger the public health, the
20 sanitary condition of streams or sources of water supply;

21 (2) The sanitary condition of all institutions and schools, whether public or private, public
22 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
23 to the general public and inviting public patronage or public assembly, or tendering to the public
24 any item for human consumption and places where trades or industries are conducted;

25 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
26 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel
27 connected with any of those facilities, including determining whether the use of a backflow
28 prevention assembly is necessary on any plumbing system, without regard to whether the
29 supplies or systems are publicly or privately owned; and the design of all water systems, plumbing
30 systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming
31 pools in this state, whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public
40 notification by a public water system on being granted a variance or exemption or upon failure to
41 comply with specific requirements of this section and rules promulgated under this section; record
42 keeping; laboratory certification; as well as procedures and conditions for granting variances and

43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water
45 and may establish requirements governing the taste, odor, appearance and other consumer
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription
48 of sale and other requirements in accordance with §16-7-1 *et seq* of the code as are necessary
49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants
51 and emergency medical care technician-paramedics; the designation of the health care facilities,
52 health care services and the industries and occupations in the state that must have emergency
53 medical service attendants and emergency medical care technician-paramedics employed and
54 the availability, communications and equipment requirements with respect to emergency medical
55 service attendants and to emergency medical care technician-paramedics. Any regulation of
56 emergency medical service attendants and emergency medical care technician- paramedics may
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 (c) The secretary shall propose a rule for legislative approval in accordance with the
70 provisions of §29A-3-1 *et seq* of this code for the distribution of state aid to local health
71 departments and basic public health services funds.

72 The rule shall include the following provisions:

73 Base allocation amount for each county;

74 Establishment and administration of an emergency fund of no more than two percent of
75 the total annual funds of which unused amounts are to be distributed back to local boards of health
76 at the end of each fiscal year;

77 A calculation of funds utilized for state support of local health departments;

78 Distribution of remaining funds on a per capita weighted population approach which
79 factors coefficients for poverty, health status, population density and health department
80 interventions for each county and a coefficient which encourages counties to merge in the
81 provision of public health services;

82 A hold-harmless provision to provide that each local health department receives no less
83 in state support for a period of four years beginning in the 2009 budget year.

84 The Legislature finds that an emergency exists and, therefore, the secretary shall file an
85 emergency rule to implement the provisions of this section pursuant to the provisions of §29A-3-
86 15 of this code. The emergency rule is subject to the prior approval of the Legislative Oversight
87 Commission on Health and Human Resources Accountability prior to filing with the Secretary of
88 State.

89 (d) The secretary may propose rules for legislative approval that may include the
90 regulation of other health-related matters which the department is authorized to supervise and for
91 which the rule-making authority has not been otherwise assigned.

**§16-1-9. Duties and powers of the commissioner; supervision over local sanitation;
violations; jurisdiction; penalties.**

1 No person, firm, company, corporation, institution or association, whether public or private,

2 county or municipal, may install or establish any system or method of drainage, water supply, or
3 sewage or excreta disposal without first obtaining a written permit to install or establish the system
4 or method from the commissioner or his or her authorized representative. All systems or methods
5 shall be installed or established in accordance with plans, specifications and instructions issued
6 by the commissioner or which have been approved in writing by the commissioner or his or her
7 authorized representative.

8 Whenever the commissioner or his or her authorized representative finds, upon
9 investigation, that any system or method of drainage, water supply, or sewage or excreta disposal,
10 whether publicly or privately owned, has not been installed in accordance with plans,
11 specifications and instructions issued by the commissioner or approved in writing by the
12 commissioner or his or her authorized representative, the commissioner or his or her authorized
13 representative shall issue an order requiring the owner of the system or method to make
14 alterations necessary to correct the improper condition. The alterations shall be made within a
15 reasonable time, which shall not exceed 30 days, unless a time extension is authorized by the
16 commissioner or his or her authorized representative.

17 The commissioner can determine that any water supply system must be equipped with a
18 backflow prevention assembly to protect the health and sanitation of water, whether publicly or
19 privately owned, and that the backflow prevention assembly must be installed by the appropriate
20 water utility at the meter and must be regularly maintained by the water utility, all maintenance
21 activities must be documented by the water utility for every backflow prevention assembly
22 required or authorized by the commissioner and provided to the commissioner upon request. All
23 backflow prevention assemblies required to be installed pursuant to this code shall be installed at
24 the expense of the water utility.

25 The presence of sewage or excreta being disposed of in a manner not approved by the
26 commissioner or his or her authorized representative constitutes prima facie evidence of the
27 existence of a condition endangering public health.

28 The personnel of the Bureau for Public Health shall be available to consult and advise with
29 any person, firm, company, corporation, institution or association, whether publicly or privately
30 owned, county or municipal, or public service authority, as to the most appropriate design, method
31 of operation or alteration of any system or method.

32 Any person, firm, company, corporation, institution or association, whether public or
33 private, county or municipal, violating any provision of this section is guilty of a misdemeanor and,
34 upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500. Any
35 continuing failure or refusal of the convicted person, firm, company, corporation, institution or
36 association, whether public or private, county or municipal, to make the alterations necessary to
37 protect the public health required by the commissioner or his or her authorized representative is
38 a separate, distinct and additional offense for each 24 hour period of failure or refusal, and, upon
39 conviction thereof, the violator shall be fined not less than \$50 nor more than \$500 for each
40 conviction: *Provided*, That none of the provisions contained in this section apply to those
41 commercial or industrial wastes that are subject to the regulatory control of the West Virginia
42 ~~Division~~ Department of Environmental Protection.

43 Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of
44 any provisions of this section.

§16-1-9a. Regulation of public water systems.

1 (a) The commissioner shall regulate public water systems as prescribed in this section.

2 (b) The commissioner shall establish by legislative rule, in accordance with §29A-3-1 *et*
3 *seq* of this code:

4 (1) The maximum contaminant levels to which all public water systems shall conform in
5 order to prevent adverse effects on the health of individuals;

6 (2) Treatment techniques that reduce the contaminant or contaminants to a level which
7 will not adversely affect the health of the consumer;

8 (3) Provisions to protect and prevent contamination of wellheads and well fields used by

9 public water supplies so that contaminants do not reach a level that would adversely affect the
10 health of the consumer;

11 (4) Minimum requirements for:

12 (A) Sampling and testing;

13 (B) System operation;

14 (C) Public notification by a public water system on being granted a variance or exemption
15 or upon failure to comply with specific requirements of this section and regulations promulgated
16 under this section;

17 (D) Recordkeeping;

18 (E) Laboratory certification; and

19 (F) Procedures and conditions for granting variances and exemptions to public water
20 systems from state public water systems' regulations;

21 (5) Requirements covering the production and distribution of bottled drinking water;

22 (6) Requirements governing the taste, odor, appearance and other consumer acceptability
23 parameters of drinking water; ~~and~~

24 (7) Any requirement for any water supply system the commissioner determines is
25 necessary to be equipped with a backflow prevention assembly to be installed and maintained by
26 the appropriate water utility, all maintenance activities must be documented and provided to the
27 commissioner upon request; and

28 (8) Any other requirement the commissioner finds necessary to effectuate the provisions
29 of this article.

30 (c) The commissioner or his or her authorized representatives or designees may enter any
31 part of a public water system, whether or not the system is in violation of a legal requirement, for
32 the purpose of inspecting, sampling or testing and shall be furnished records or information
33 reasonably required for a complete inspection.

34 (d) The commissioner, his or her authorized representative or designee may conduct an

35 evaluation necessary to assure the public water system meets federal safe drinking water
36 requirements. The public water system shall provide a written response to the commissioner
37 within 30 days of receipt of the evaluation by the public water system, addressing corrective
38 actions to be taken as a result of the evaluation.

39 (e)(1) Any individual or entity who violates any provision of this article, or any of the rules
40 or orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more
41 than \$5,000. Each day's violation shall constitute a separate offense.

42 (2) For a willful violation of a provision of this article, or of any of the rules or orders issued
43 under this article, an individual or entity shall be subject to a civil penalty of not more than \$10,000
44 and each day's violation shall be grounds for a separate penalty.

45 (3) Civil penalties are payable to the commissioner. All moneys collected under this
46 section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All
47 moneys deposited into the fund shall be used by the commissioner to provide technical assistance
48 to public water systems.

49 (f) The commissioner, or his or her authorized representative, may also seek injunctive
50 relief in the circuit court of the county in which all or part of the public water system is located for
51 threatened or continuing violations.

NOTE: The purpose of this bill is to permit the commissioner to require a water supply system be equipped with a backflow prevention assembly; requiring the appropriate water utility to install the backflow prevention assembly at the meter; requiring the appropriate water utility to maintain the backflow prevention assembly; and requiring the water utility to provide information relating to maintenance and necessity for any backflow prevention assembly.

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