

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2228**

BY DELEGATE FLEISCHAUER

[Introduced February 10, 2021; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend and reenact §16-1-6 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §22-1-3 of said code, all relating to requiring the commissioner of the  
 3 Bureau for Public Health to conduct a public health impact statement assessing the health  
 4 impact of any new, or modification to, rule proposed by the secretary of the Department  
 5 of Environmental Protection; and requiring the secretary of the Department of  
 6 Environmental Protection to incorporate findings of the impact statement into the proposed  
 7 rule.

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

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§16-1-6. Powers and duties of the commissioner.**

1 The commissioner is the chief executive, administrative and fiscal officer of the Bureau for  
 2 Public Health and has the following powers and duties:

3 (a) To supervise and direct the fiscal and administrative matters of the bureau, and in that  
 4 regard and in accordance with law, employ, fix the compensation of and discharge all persons  
 5 necessary for the proper execution of the public health laws of this state and the efficient and  
 6 proper discharge of the duties imposed upon, and execution of powers vested in the  
 7 commissioner by law and as directed by the secretary;

8 (b) To enforce all laws of this state concerning public health; to that end, the commissioner  
 9 shall make, or cause to be made, investigations and inquiries respecting the cause of disease,  
 10 especially of epidemics and endemic conditions, and the means of prevention, suppression or  
 11 control of those conditions; the source of sickness and mortality, and the effects of environment,  
 12 employment, habits and circumstances of life on the public health.

13 The commissioner shall further make, or cause to be made, inspections and examinations  
 14 of food, drink and drugs offered for sale or public consumption in the manner the commissioner

15 considers necessary to protect the public health and shall report all violations of laws and rules  
16 relating to the law to the prosecuting attorney of the county in which the violations occur;

17 (c) To make complaint or cause proceedings to be instituted against any person,  
18 corporation or other entity for the violation of any public health law before any court or agency,  
19 without being required to give security for costs; the action may be taken without the sanction of  
20 the prosecuting attorney of the county in which the proceedings are instituted or to which the  
21 proceedings relate;

22 (d) To promote the provision of essential public health services to citizens of this state;

23 (e) To monitor the administration, operation and coordination of the local boards of health  
24 and local health officers;

25 (f) To develop and maintain a state plan of operation that sets forth the needs of the state  
26 in the areas of public health; goals and objectives for meeting those needs; methods for achieving  
27 the stated goals and objectives; and needed personnel, funds and authority for achieving the  
28 goals and objectives;

29 (g) To collect data as may be required to foster knowledge on the citizenry's health status,  
30 the health system and costs of health care;

31 (h) To delegate to any appointee, assistant or employee any and all powers and duties  
32 vested in the commissioner, including, but not limited to, the power to execute contracts and  
33 agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the  
34 acts of his or her appointees, assistants and employees;

35 (i) To transfer at the direction of the secretary, notwithstanding other provisions of this  
36 code, any patient or resident between hospitals and facilities under the control of the  
37 commissioner and, by agreement with the State Commissioner of Corrections and otherwise in  
38 accord with law, accept a transfer of a resident of a facility under the jurisdiction of the State  
39 Commissioner of Corrections;

40 (j) To make periodic reports to the Governor and to the Legislature relative to specific

41 subject areas of public health, the state facilities under the supervision of the commissioner, or  
42 other matters affecting the public health of the people of the state, at the direction of the secretary;

43 (k) At the direction of the secretary, to accept and use for the benefit of the health of the  
44 people of this state, any gift or devise of any property or thing which is lawfully given: *Provided,*  
45 That if any gift is for a specific purpose or for a particular state hospital or facility it shall be used  
46 as specified. Any profit which may arise from any gift or devise of any property or thing shall be  
47 deposited in a special revenue fund with the State Treasurer and shall be used only as specified  
48 by the donor or donors;

49 (l) To acquire by condemnation or otherwise any interest, right, privilege, land or  
50 improvement and hold title to the land or improvement, for the use or benefit of the state or a state  
51 hospital or facility, and, by and with the consent of the Governor, and at the direction of the  
52 secretary, to sell, exchange or otherwise convey any interest, right, privilege, land or improvement  
53 acquired or held by the state, state hospital or state facility and deposit the proceeds from the  
54 sale, exchange or other conveyance into the hospital services revenue account. Any  
55 condemnation proceedings shall be conducted pursuant to chapter 54 of this code;

56 (m) To inspect and enforce rules to control the sanitary conditions of and license all  
57 institutions and health care facilities as set forth in this chapter, including, but not limited to,  
58 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,  
59 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places  
60 open to the general public and inviting public patronage or public assembly, or tendering to the  
61 public any item for human consumption and places where trades or industries are conducted;

62 (n) To make inspections, conduct hearings, and to enforce the legislative rules concerning  
63 occupational and industrial health hazards, the sanitary condition of streams, sources of water  
64 supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected  
65 with the supplies, facilities or systems without regard to whether they are publicly or privately  
66 owned; and to make inspections, conduct hearings and enforce the legislative rules concerning

67 the design of chlorination and filtration facilities and swimming pools;

68 (o) To provide in accordance with this subdivision and the definitions and other provisions  
69 of §27-1A-1 *et seq.* of this code, and as directed by the secretary, for a comprehensive program  
70 for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the  
71 cause and prevention of alcoholism and drug abuse; for the training and employment of personnel  
72 to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the  
73 public concerning alcoholism and drug abuse;

74 (p) To provide in accordance with this subdivision for a program for the care, treatment  
75 and rehabilitation of the parents of sudden infant death syndrome victims; for the training and  
76 employment of personnel to provide the requisite rehabilitation of parents of sudden infant death  
77 syndrome victims; for the education of the public concerning sudden infant death syndrome; for  
78 the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden infant  
79 death syndrome cases occurring in West Virginia; for the education of police, employees and  
80 volunteers of all emergency services concerning sudden infant death syndrome; for the state  
81 sudden infant death syndrome advisory council to develop regional family support groups to  
82 provide peer support to families of sudden infant death syndrome victims; and for requesting  
83 appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome  
84 program;

85 (q) To establish and maintain a state hygienic laboratory as an aid in performing the duties  
86 imposed upon the commissioner, and to employ chemists, bacteriologists, and other employees  
87 that may be necessary to properly operate the laboratory. The commissioner may establish  
88 branches of the state laboratory at any points within the state that are necessary in the interest of  
89 the public health;

90 (r) To establish and fund a uniform health professionals data system to collect and  
91 maintain uniform data on all health professionals in the state. This data shall include, but not be  
92 limited to, the following information about each health professional: His or her name, profession,

93 the area of the state where he or she is practicing, his or her educational background, his or her  
94 employer's name, and number of years practicing within the profession. The boards provided for  
95 in §30-3-1 *et seq.*, §30-4-1 *et seq.*, §30-4A-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1  
96 *et seq.*, §30-14-1 *et seq.*, §30-14A-1 *et seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*,  
97 §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-28-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-  
98 1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, and §30-37-1 *et seq.* of this code shall annually  
99 collect the data on health professionals under their jurisdiction in the format prescribed by the  
100 commissioner. Each board shall pay to the bureau annually, an amount determined by the  
101 commissioner to be a pro rata portion, for anticipated expenses to establish and operate the  
102 uniform health professionals data system required by this section. The commissioner may  
103 standardize data collection methods if necessary to implement the provisions of this section. The  
104 commissioner shall publish annually and make available, upon request, a report setting forth the  
105 data which was collected the previous year; areas of the state which the collected data indicates  
106 have a shortage of health professionals; and projections, based upon the collected data, as to the  
107 need for more health professionals in certain areas;

108 (s) To expend, for the purpose of performing the public health duties imposed on the  
109 bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may  
110 make advance payments to public and nonprofit health services providers when the commissioner  
111 determines it is necessary for the initiation or continuation of public health services. The advance  
112 payments, being in derogation of the principle of payment only after receipt of goods or services,  
113 shall be authorized only after serious consideration by the commissioner of the necessity of the  
114 advance payments and shall be for a period no greater than 90 days in advance of rendition of  
115 service or receipt of goods and continuation of health services; and

116 (t) To prepare and submit a public health impact statement assessing the health impact of  
117 any new rule, or modification of an existing rule, proposed by the secretary of the Department of  
118 Environmental Protection to ensure that no air or water rule is promulgated without substantiating

119 independent medical or scientific evidence that there is no detrimental public health impact from  
 120 the rule; and

121 (†) (u) To exercise all other powers delegated to the commissioner by the secretary or by  
 122 this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities  
 123 necessary and incident to the authority and area of concern entrusted to the bureau or the  
 124 commissioner.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

#### §22-1-3. Rulemaking generally; relationship to federal programs.

1 (a) The ~~director has the power and authority to~~ secretary may propose legislative rules for  
 2 promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out and  
 3 implement the provisions of this chapter and to carry out and implement any other provision of  
 4 law relating to offices or functions of the ~~division~~ department.

5 (b) The requirements and limitations set forth in this section apply to any rule-making  
 6 authority granted pursuant to this chapter or chapters 22B and 22C of this code.

7 (c) Prior to the proposal of any new rule, the ~~director~~ secretary shall consult with the  
 8 Division of Environmental Protection advisory council and after ~~such~~ the consultation, the ~~director~~  
 9 secretary may determine that ~~such~~ the rule should be the same in substance as a counterpart  
 10 federal regulation. If the ~~director~~ secretary determines that the rule should be the same in  
 11 substance as a counterpart regulation, then to the greatest degree practicable, ~~such~~ the proposed  
 12 rule shall incorporate by reference the counterpart federal regulation. The ~~director~~ secretary shall  
 13 file, contemporaneously with the proposed rule, a statement setting forth whether the rule is the  
 14 same in substance as a counterpart federal regulation. If the ~~director~~ secretary determines that  
 15 the rule should not be the same in substance as a counterpart federal regulation, then the ~~director~~  
 16 secretary shall file contemporaneously with the proposed rule, a statement setting forth the

17 differences between the proposed rule and the counterpart federal regulation. In addition, the  
18 ~~director~~ secretary shall file a statement setting forth the results of the consultation with the  
19 advisory council.

20 (d) Whenever any existing rule is modified, amended or replaced, ~~the provisions of~~  
21 subsection (c) of this section ~~apply~~ applies to the proposal of ~~any such~~ the modification,  
22 amendment or replacement rule.

23 (e) Notwithstanding ~~the provisions of~~ §29A-3-1 *et seq.* of this code, at least one public  
24 hearing shall be held by the division in conjunction with each rulemaking prior to the expiration of  
25 the public comment period for the proposed rules.

26 (f) Notwithstanding any other provision of this chapter to the contrary, the commissioner  
27 of the Bureau for Public Health shall prepare and submit a public health impact statement  
28 pursuant to §16-1-6 of this code assessing the health impact of any new rule, or modification of  
29 an existing air rule, proposed by the secretary, and the secretary shall incorporate and implement  
30 any findings from the impact statement into the proposed rule.

NOTE: The purpose of this bill is to require the commissioner of Bureau for Public Health to conduct a public health impact statement assessing the health impact of any new air or water rule, or modification of an existing air or water rule, proposed by the Department of Environmental Protection to ensure that no air or water rule is promulgated without substantiating independent medical or scientific evidence that there is no detrimental public health impact from the rule. The bill also requires that the findings in the impact statement be incorporated into the proposed rule.

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