

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2617

BY DELEGATES BARNHART, FOSTER, KEATON, AND

HAMRICK

[Introduced February 19, 2021; Referred to the Committee
on Government Organization then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §4-16-1, §4-16-2, §4-16-3, §4-16-4, §4-16-5, §4-16-6, §4-16-7, §4-16-8, §4-
 3 16-9, §4-16-10, and §4-16-11, all relating to capping the total number of regulatory
 4 requirements enacted by the State of West Virginia; and ensuring that for every new
 5 regulatory requirement enacted, two old regulatory requirements are sunset until the Red
 6 Tape Reduction Target is met, at which point the article will allow for every new regulatory
 7 requirement enacted, one old regulatory requirement will be sunset, thus maintaining zero
 8 net new regulatory requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. THE GOVERNMENT RED TAPE CAP ACT OF 2021.

§4-16-1. Short title.

1 This article may be cited as the Government Red Tape Cap Act of 2021.

§4-16-2. Definitions.

1 Scope. -- For the purposes of this article, the words defined in this section have the
 2 meaning given.

3 “Regulatory Requirement” means any action or step that must be taken, or piece of
 4 information that must be provided in accordance with government legislation, regulation, policy or
 5 forms, in order to access services, carry out business, or pursue legislated privileges. The term
 6 includes any amendment or repeal of prior “Regulatory Requirements” but does not include the
 7 following:

8 (a) Statements concerning only the internal management of any agency and not affecting
 9 private rights or procedures available to the public;

10 (b) Declaratory rulings;

11 (c) Intra-agency or inter-agency memoranda.

12 “Agency” means each state board, commission, institution, department, other office in the
 13 executive branch of state government that is created by the constitution or statute of West Virginia,

14 or officer authorized by law to make regulations (including their associated “regulatory
15 requirements”) or to determine contested cases.

16 “Proposed Regulation” means a proposal by an agency or legislation for a new regulation
17 or for a change in, addition to, or repeal of an existing regulation.

18 “Cap” means a limit on the total number such as to create and sustain a zero net increase
19 after a specific date.

20 “Plain Language” means written without acronyms, jargon, or legal phrasing.

§4-16-3. Legislative Findings and Intent.

1 A vibrant and growing business sector is critical to creating jobs in a dynamic economy.
2 Unnecessary or overly burdensome regulatory requirements create barriers to entry in many
3 industries and discourage potential entrepreneurs from introducing beneficial products or
4 processes. Alternative regulatory approaches that do not conflict with the stated objective of
5 applicable statutes may be available to minimize the significant economic impact of rules on the
6 private economy. Regulatory requirements can impose unnecessary and disproportionately
7 burdensome demands including legal, accounting and consulting costs upon small businesses
8 with limited resources.

9 To mitigate the negative economic effects of regulatory requirements required by the state
10 of West Virginia, any new proposed regulatory requirements or proposed sunsets of existing
11 regulatory requirements will be evaluated with the following considerations:

12 State agencies should seek to achieve statutory goals as effectively and efficiently as
13 possible without imposing unnecessary burdens on the public;

14 The regulatory requirement is the only effective and necessary way to achieve the desired
15 outcome;

16 The regulatory requirement compliments and does not duplicate existing regulatory
17 requirements;

18 The regulatory requirement is designed to be simple to administer and comply with;

19 The regulatory requirement includes performance measures that are directly related to the
20 desired outcome;

21 The regulatory requirement will be reviewed often and amended to ensure intended
22 outcomes are met;

23 The regulatory requirement will be sunset when it no longer achieves its desired
24 outcomes;

25 The regulatory requirement includes clear reasons for its implementation and its
26 development and implementation processes are clear and open to the public;

27 The regulatory requirement is easy to understand and written in plain language;

28 Citizens and businesses clearly understand their rights and obligations under the
29 regulatory requirement.

30 The regulatory requirement can be easily accessed by all affected parties;

31 The regulatory requirement utilizes appropriate and modern notification methods;

32 The regulatory requirement is cost effective and evidence based;

33 Analysis finds that the regulatory requirement is the most cost effective way to achieve the
34 desired outcome(s);

35 The benefits of the regulatory requirement are greater than the burdens it imposes;

36 The regulatory requirement does not have a detrimental effect on the economy of West
37 Virginia;

38 The regulatory requirement does not have a negative effect on the economic
39 competitiveness of West Virginia;

40 The regulatory requirement is not harder to comply with than similar regulatory
41 requirements in similar jurisdictions;

42 The regulatory requirements fits with the strategic goals of promoting a level playing field
43 for all businesses and industries;

44 The regulatory requirement fits with the strategic goal of job creation and economic

45 growth.

§4-16-4. Cap on Regulatory Requirements.

1 The State of West Virginia hereby establishes a cap on the total number of regulatory
2 requirements, ensuring a zero net increase in regulatory requirements beginning six months after
3 the enactment of this article as enumerated in section 11 of this article. All actions relating to the
4 enforcement of section 4 of this article shall be conducted by the Office of Regulatory
5 Management as enumerated in section 5 of this article. The measurement of current regulatory
6 requirements shall be conducted under the supervision of the Office of Regulatory Management
7 in accordance with section 5 of this article. To ensure compliance with section 4 of this article, all
8 proposed regulation after the enactment of this article enumerated in section 10 of this article
9 must be evaluated under the supervision of the Office of Regulatory Management in accordance
10 with section 5 of this article. Red Tape Reduction Target will be a reduction of 35 percent of the
11 existing regulatory requirements. Once this target is met, section 8 will take effect.

§4-16-5. Office of Regulatory Management

1 To enforce and manage the cap on regulatory requirements outlined in section 4 of this
2 article, the Governor will create an Office of Regulatory Management. The Office of Regulatory
3 Management will include the following:

4 A Chief Regulatory Management Officer to manage the Office of Regulatory Management;
5 No later than three months after the enactment of this legislation as enumerated in section
6 11 of this article, the Governor shall appoint an individual as Chief Regulatory Management
7 Officer.

8 Appropriate staff to carry out the duties of the Office of Regulatory Management as
9 outlined section 5 of this article;

10 Duties. -- The Office of Regulatory Management will supervise the establishment of a
11 baseline measurement of regulatory requirements currently in place six months after the
12 enactment of this article. Each agency will conduct an internal review of all regulatory

13 requirements currently in place six months after the enactment of this article under the supervision
14 of the Office of Regulatory Management. Each regulatory requirement will be listed along with its
15 governing regulation, legislation, or other rule-making document. This baseline of regulatory
16 requirements, along with their governing agencies, regulations, legislation, or other governing
17 documents will be communicated to the Office of Regulatory Management. This review of current
18 regulatory requirements will be completed no later than six months after the enactment of this
19 article. This list of regulatory requirements shall serve as a baseline to ensure a zero net increase
20 in total regulatory requirements as outlined in section 4 of this article;

21 To ensure a zero net increase in regulatory requirements, the Office of Regulatory
22 Management will establish and facilitate a process of Regulatory Requirement Replacement
23 which will include the following provisions:

24 All evaluations of proposed new regulatory requirements or proposed sunsets of existing
25 regulatory requirements will be considered in accordance with Section 3 of this article;

26 For each newly proposed regulation after the creation of the regulatory requirement
27 baseline, the entity proposing the new regulation must submit a regulatory requirement
28 replacement request to the Office of Regulatory Management.

29 The Regulatory Requirement Replacement request will include the following components:

30 (1) Name of authorizing legislation,

31 (2) Name of authorizing regulation, if applicable,

32 (3) Purpose of the proposed regulation,

33 (4) Number of new regulatory requirements that would be enacted,

34 (5) Proposed regulatory requirements to sunset,

35 (6) Total number of regulatory requirements added if enacted,

36 The Office of Regulatory Management will ensure that the total number of regulatory
37 requirements is kept at the same level or reduced before approving the regulatory requirement
38 replacement request. The Office of Regulatory Management may offer advice on which regulatory

39 requirements to sunset to ensure a zero net increase of total regulatory requirements.

40 Only after the approval of the regulatory requirement replacement request by the Office of
41 Regulatory Management may the proposed regulations and their offsetting sunset(s) of existing
42 regulatory requirements be enacted. The Office of Regulatory Management will facilitate
43 interactions between Agencies and the Red Tape Reduction Commission, which will include the
44 following duties:

45 Distributing the biannual reports of the Red Tape Reduction Commission to the
46 appropriate agency,

47 Transmitting the questions, answers, or other explanatory documents between
48 government agencies and the Red Tape Reduction Commission.

49 Facilitating the communication between members of the Red Tape Reduction Commission
50 and relevant staff of government agencies.

51 Public Reporting. -- The Office of Regulatory Management will ensure that the public is
52 informed of all regulatory requirements, regulatory requirement replacement requests, and
53 progress towards the red tape reduction goal and/or the requirement of zero net new regulatory
54 requirements in the following ways:

55 The Office of Regulatory Management will build and maintain a website to facilitate its
56 public reporting responsibilities. The Office of Regulatory Management will build, maintain, and
57 make available to the public a searchable online database of all current regulatory requirements
58 to include:

59 (1) A list of all current regulatory requirements;

60 (2) The plain language purpose of each regulatory requirement;

61 (3) The responsible Agency for each regulatory requirement;

62 (4) The authorizing legislation and/or regulation for each regulatory requirement;

63 (5) Any changes to the baseline of regulatory requirements since the enactment of this
64 legislation.

65 The Office of Regulatory Requirement will post to its website all approved Regulatory
66 Requirement Replacement Requests. The Office of Regulatory Management will prepare and
67 post to its website a quarterly report of all approved regulatory requirement replacement requests,
68 changes to the total number of regulatory requirements, and progress towards the goal of red
69 tape reduction as measured against the regulatory requirement baseline outlined in section 5 of
70 this article.

§4-16-6. Red Tape Reduction Commission.

1 The Red Tape Reduction Commission is hereby established. Its membership will include
2 the following:

3 The Chief Regulatory Management Officer will serve as Chairman of the Red Tape
4 Reduction Commission;

5 The Governor or an individual the Governor designates;

6 The Speaker of the House, or an individual the Speaker of the House designates;

7 The Senate President (or Lieutenant Governor), or an individual the Senate President (or
8 Lieutenant Governor) designates.

9 The Governor will select three volunteer members of the private sector to serve on the
10 Red Tape Reduction Commission;

11 The Speaker of the House will select three volunteer members of the private sector to
12 serve on the Red Tape Reduction Commission;

13 The Senate President (or Lieutenant Governor) will select three volunteer members of the
14 private sector to serve on the Red Tape Reduction Commission;

15 The Chief Regulatory Management Officer will select two volunteer members of the private
16 sector to serve on the Red Tape Reduction Commission; and

17 Private Sector volunteer members will have a term lasting two years.

18 Duties. -- The Red Tape Reduction Commission will focus on preparing suggestions
19 concerning which current regulatory requirements meet the following criteria:

- 20 (a) Are duplicative or unnecessary;
- 21 (b) Are especially burdensome on businesses within the state;
- 22 (c) Disproportionally affect businesses with fewer than 50 employees;
- 23 (d) Disproportionally affect businesses with annual revenues below \$1,000,000;
- 24 (e) Are easily managed by large firms and effectively limit competition by smaller firms;
- 25 (f) Could be sunset with minimal impact to public safety;
- 26 (g) Are consistent with section 3 of this article.

27 The suggestions of the Red Tape Reduction Commission will be compiled into reports (no
 28 fewer than two per year) that will then be transmitted to the relevant agency by the Office of
 29 Regulatory Management. Any interaction between members of the Red Tape Reduction
 30 Commission and government agencies will be facilitated by the Office of Regulatory Management
 31 as outlined in section 5 of this article. The Red Tape Reduction Commission shall meet as often
 32 as necessary to fulfill its duties as outlined in this section.

33 Public Reporting. -- The Red Tape Reduction Commission will operate openly and
 34 transparently in the following ways:

35 (a) The Red Tape Reduction Commission is subject to all open meetings and open records
 36 laws in West Virginia;

37 (b) Members of the commission (or their designees) will be listed on the website of the
 38 Office of Regulatory Management;

39 (c) All meetings of the Red Tape Reduction Commission will be posted on the website of
 40 the Office of Regulatory Management at least 48 hours prior to meeting and will be open to the
 41 general public;

42 (d) All biannual reports created by the Red Tape Reduction Commission will be posted
 43 online in a searchable format on the website of the Office of Regulatory Management.

§4-16-7. Emergency Exemption.

1 If the secretary or other head of a government agency wishes, it may submit an application

2 for new proposed regulations to be exempt from this article by the following process:

3 (a) The responsible agency must complete a regulatory requirement replacement request
4 as outlined in section 5 of this article;

5 (b) In addition to the standard regulatory requirement replacement request, the agency
6 must also provide an explanation as to why a new proposed regulation should be exempt from
7 this article.

8 The documents outlined in section 7 must be transmitted to the Office of Regulatory
9 Management and to both houses of the Legislature. The Office of Regulatory Management will
10 provide a recommendation to the Legislature either supporting or opposing the waiver request
11 from the agency seeking to exempt newly proposed regulation from this article. A two-thirds vote
12 in both houses of the Legislature shall be required to grant an agency’s request for newly
13 proposed regulations to be exempt from the requirements of this article.

§4-16-8. Red Tape Reduction Target Adjustment Clause.

1 Once the Red Tape Reduction Target outlined in section 4 is met, this article will change
2 from requiring the sunset of two existing regulatory requirements for every new regulatory
3 requirement enacted, to requiring the sunset of one existing regulatory requirement for every new
4 regulatory requirement enacted.

§4-16-9. Applicability Clause.

1 If any conflict arises between this article and any other law, this article controls.

§4-16-10. Severability Clause.

1 If any provision of this article or its application to any person or circumstance is held invalid
2 that invalidity does not affect other provisions or applications of the article that can be given effect
3 without the invalid provision or application, and to this end the provisions of this article are
4 severable.

§4-16-11. Effective Date.

1 This article shall become effective 90 days from passage.

NOTE: The purpose of this bill is to cap the total number of regulatory requirements enacted by the State of West Virginia.

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