

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 277**

By Senators Swope and Maynard

[Introduced January 18, 2023; referred  
to the Committee on the Judiciary]

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/or  
 6 reservations; and providing penalty for unauthorized use of trademark.

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

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

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

**§5-30-2. Definitions.**

1 As used in this article:

2 "Executive Director" means the Executive Director of the Herbert Henderson Office of  
3 Minority Affairs as appointed by the Governor pursuant to §5-29-1 et seq. of this code.

4 "Indian" means an individual who either:

5 (1) Is a member of an Indian tribe;

6 (2) Is certified as an Indian artisan by an Indian tribe;

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

9 (4) Is certified as a member of a recognized Indian tribe, an Indian organization, or  
10 recognized in the community as an American Indian by way of legislative resolutions,  
11 proclamations of governors, by evidence contained within the WV Culture and History, or  
12 recognized by this state pursuant to the provisions of this article.

13 "Indian Organization" means any nonprofit Native American organizations that:

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

15 (2) Is dedicated to preserving Native American principles, traditions, culture, history,  
16 language, and arts;

17 (3) Performs free genealogical research to verify that an individual meets the definition of

18 "Indian" as defined in this article; and

19 (4) Retains genealogical information collected on its members; or

20 (5) Is recognized by a state legislative body as an Indian organization or group, in which a  
21 majority of its members are recognized as Indians, or such organization is federally recognized as  
22 an Indian organization, shall be considered to have satisfied the requirements of this article.

23 "Indian Tribe," "Native American Tribe," or "Tribe" means any Native American Indian  
24 Tribe, band, nation, or other organized group or community which:

25 (1) Is recognized by any state in these United States as enacted by legislative action; or

26 (2) Is recognized by this state or is seeking recognition pursuant to the provisions of this  
27 article.

28 "Office" means the Herbert Henderson Office of Minority Affairs pursuant to §5-29-1 et seq.  
29 of this code.

30 "State Recognized Tribe" or "West Virginia Recognized Tribe" means any Native American  
31 Indian Tribe, band, nation, or other organized group or community as designated by this article or  
32 as recognized in the initial enactment of this article or as recognized pursuant to the provisions for  
33 recognition as proscribed by this article.

34 "Secretary" means the West Virginia Secretary of State.

35 "Trademark", or "West Virginia Native American Trademark," or "Native American  
36 Trademark" means any word, name, symbol, mark, or any combination thereof used by a person  
37 or tribe to identify and distinguish a unique product, service or good, made or provided exclusively  
38 in West Virginia by persons affiliated with or belonging to any recognized tribe in this state.  
39 Notwithstanding any other provisions of this code to the contrary and unless otherwise specifically  
40 implied in connection with this article, the term "trademark" may not reduce or restrict the authority  
41 of the Secretary of State to issue such trademarks and require such application and fees as  
42 required pursuant to the provisions of §47-2-1 et seq. of this code.

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

1 (a) Tribes and qualified members of tribes may be recognized as a Native American Tribe  
2 of West Virginia and Native American Peoples of West Virginia including, but not limited to, the  
3 purposes of:

4 (1) Establishing eligibility for various educational opportunities, including, but not limited to,  
5 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 any activity that may be established pursuant to this article.

12 (b) The following Indian organization shall be officially recognized as a Native American  
13 Tribe of West Virginia: Cheraw of WV.

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

1 (a) Native American Tribes may apply for and petition for recognition as a Native American  
2 Tribe of West Virginia in accordance with the procedures and requirements set forth in this article.

3 (b) The executive director may propose rules for legislative approval in accordance with  
4 the provisions of §29A-3-1 et seq. of this code for the purpose of requiring and prescribing forms  
5 and describing the process for the evaluation and approval of Native American Tribes.

6 (c) The executive director shall propose state recognition of Native American Tribes in the  
7 form of a rule, for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this  
8 code.

9 (d) The executive director shall review all requests for recognition of Native American  
10 Tribes.

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

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

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

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

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

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

21 (1) Affidavits from elderly group members that the group has identified internally as  
22 "Indian";

23 (2) Affidavits by local area residents of descendants testifying that the group or individual  
24 members identified themselves as "Indian";

25 (3) Local, state, or federal records that show the group or individual members identified  
26 themselves as "Indian";

27 (4) Accounts by anthropologists that mention or describe the group or individual members  
28 as "Indian" or by the name of the group or individuals seeking recognition;

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

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

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

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

37 (9) Treaties, resolutions, agreements, or other governmental records or correspondences  
38 pertaining to the group's lands or activities, including any record of encroachment on such lands or  
39 activities;

40 (10) Census records, tax records, land deeds, land patents, plat books, or other records  
41 mentioning the group's location, members living nearby or otherwise describing such community  
42 structures; or

43 (11) Genealogical records of any current member or living ancestor appearing in public  
44 records as "Indian" or by group name.

45 (g) The burden of proof is on the petitioning group, not the evaluators.

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

47 (1) 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 (2) A formal petition or letter of intent signed by a simple majority of the members of the  
51 group seeking recognition; and

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

53 (i) 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 §5-26-1 of this code.

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

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

1 (a) Nothing in this article may be construed to imply or permit gambling or gaming as  
2 regulated by the West Virginia Lottery Commission pursuant to the provisions of §29-22-1 et seq.,  
3 §29-22A-1 et seq., §29-22B-1 et seq., or §29-22C-1 et seq. 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 the  
8 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 provide a procedure for the State of West Virginia to officially recognize certain qualified Native American tribes of West Virginia as a Native American Tribe 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.