

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4376**

By Delegate Mallow and Tully

[Originating in the Committee on Health and Human

Resources; Reported on January 25, 2024]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §16-5B-21, relating to requirements for smoke evacuation systems for health  
3 care facilities; defining terms; and creating penalties for violation of requirement.

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

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-21. Smoke evacuation system required for certain surgical procedures.**

1 (a) As used in this section:

2 (1) "Energy generating device" means any tool that performs a surgical function using  
3 heat, laser, electricity, or another form of energy;

4 (2) "Smoke evacuation system" means smoke evacuators, laser plume evacuators, or  
5 local exhaust ventilators that effectively capture and neutralize surgical smoke at the site of origin  
6 and before the smoke can make ocular contact or contact with the respiratory tract of the  
7 occupants of the room; and

8 (3) "Surgical smoke" means the by-product, including surgical plume, smoke plume, bio-  
9 aerosols, laser-generated airborne contaminants, and other lung-damaging dust, that results from  
10 contact with tissue by an energy generating device.

11 (b) On or before January 1, 2025, in order to protect operating room nurses, operating  
12 room personnel, and patients from the hazards of surgical smoke, the Office of the Inspector  
13 General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1  
14 et seq. of this code requiring a health care facility licensed under this chapter that utilizes energy  
15 generating devices to use a smoke evacuation system during any surgical procedure that is likely  
16 to produce surgical smoke.

17 (c) Any health facility acting by or through its agents or employees that violates subsection  
18 (b) of this section shall be punished by a fine of not less than \$100 nor more than \$500 for each  
19 violation.

NOTE: The purpose of this bill is to ensure that a smoke evacuation system is in place to protect medical personnel during any medical treatment where there could be surgical smoke.

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