

1 **H. B. 2779**

2
3 (By Delegates Stephens, Morgan, Fleischauer,
4 Perdue, Reynolds, Marshall and Young)

5 [Introduced March 1, 2013; referred to the
6 Committee on Government Organization then the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended , by
11 adding there to a new article, designated §5-30-1, §5-30-2,
12 §5-30-3, §5-30-4, and §5-30-5, all relating to state
13 recognition of Native American tribes; defining terms;
14 designating certain tribes as recognized by the state;
15 establishing criteria for state recognition of additional
16 tribes; authorizing unique trademarks for certain arts and
17 crafts; prohibiting gambling; and providing penalty for
18 unauthorized use of trademark.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article designated §5-30-1, 5-30-2, §5-30-
22 3, §5-30-4 and §5-30-5, all to read as follows:

23 **ARTICLE 30. WEST VIRGINIA NATIVE AMERICAN TRIBES UNIQUE**

24 **RECOGNITION, AUTHENTICATION AND LISTING ACT.**

1 **§5-30-1. State Recognition of Native American Tribes.**

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

10 (b) This article shall be known as the "West Virginia Native
11 American Tribes Unique Recognition, Authentication and Listing
12 Act".

13 (c) This article should be liberally construed to encourage
14 and enhance state recognition of Native American Tribes where
15 recognized status is required to determine eligibility for
16 educational, cultural and economic development opportunities,
17 incentives and programs, including but not limited to applicable
18 programs, grants, awards and trademark recognition as required or
19 recognized pursuant to the Indian Arts and Crafts Act of 1990 and
20 the subsequent revisions to Public Law 101-644.

21 **§5-30-2. Definitions.**

22 (a) As used in this article:

23 (1) "Executive Director" means the executive director of the
24 Herbert Henderson Office of Minority Affairs as appointed by the

1 Governor pursuant to article twenty-nine of chapter five of this
2 code.

3 (2) "Indian" means an individual who:

4 (A) Is a member of an Indian tribe;

5 (B) Is certified as an Indian artisan by an Indian tribe; or

6 (C) Is a direct lineal descendant of a person listed on the

7 base roll of an Indian tribe, whether or not such individual

8 qualifies for membership in the Indian tribe; or

9 (D) Is a direct lineal descendant of a person listed on a

10 judgment fund distribution list, roll or census of Indians or other

11 document prepared and approved by the Secretary of the Interior or

12 his or her authorized representative, whether or not such judgment

13 fund distribution list, roll, census or document is used by an

14 Indian tribe to determine membership; or

15 (E) Is certified as a member of a recognized Indian Tribe by

16 an Indian Organization recognized by this state pursuant to the

17 provisions of this article.

18 (3) "Indian Organization" means the Native American Indian

19 Federation Incorporated, the Appalachian American Indians of West

20 Virginia Incorporated, or other nonprofit Native American

21 organization that:

22 (A) Is chartered as a 501(c)(3) with the state in which the

23 organization is headquartered;

24 (B) Is dedicated to preserving Native American principles,

1 traditions, culture, history, language and arts;

2 (C) Performs free genealogical research to verify that an
3 individual meets the definition of "Indian" as defined in this
4 article; and

5 (D) Retains genealogical information collected on its members;
6 or

7 (E) Is recognized by a state legislative body as an Indian
8 Organization or group, in which a majority of its members are
9 recognized as Indians, or such organization is federally recognized
10 as an Indian Organization, shall be considered to have satisfied
11 the requirements of this article.

12 (4) "Indian Tribe", "Native American Tribe", or "Tribe" means
13 any Native American Indian tribe, band, nation or other organized
14 group or community which:

15 (A) Is recognized by the United States Secretary of the
16 Interior; or

17 (B) Is recognized by any state in these United States as
18 enacted by Legislative action; or

19 (C) Is recognized by this state in, or is seeking recognition
20 pursuant to the provisions of this article.

21 (5) "Office" means the Herbert Henderson Office of Minority
22 Affairs pursuant to article twenty-nine of chapter five of this
23 code.

24 (6) "State Recognized Tribe" or "West Virginia Recognized

1 Tribe” means any Native American Indian tribe, band, nation or
2 other organized group or community as designated by this article or
3 as recognized in the initial enactment of this article or as
4 recognized pursuant to the provisions for recognition as proscribed
5 by this article.

6 (7) “Secretary” means the West Virginia Secretary of State.

7 (8) “Trademark”, or “West Virginia Native American Trademark”
8 or “Native American Trademark” means any word, name, symbol, mark
9 or any combination thereof used by a person or tribe to identify
10 and distinguish a unique product, service or good, made or provided
11 exclusively in West Virginia by persons affiliated with or
12 belonging to any recognized tribe in this state. Notwithstanding
13 any other provisions of this code to the contrary and unless
14 otherwise specifically implied in connection with this article, the
15 term “trademark” may not reduce or restrict the authority of the
16 Secretary of State to issue such trademarks and require such
17 application and fees as required pursuant to the provisions of
18 article two, chapter forty-seven of this code.

19 **§5-30-3. Recognized Native American Tribes of West Virginia.**

20 (a) Upon enactment of this article the tribes and qualified
21 members of such tribes may be recognized as Native American tribes
22 of West Virginia and Native American peoples of West Virginia
23 including, but not limited to, the purposes of:

24 (1) Establishing eligibility for various educational

1 opportunities, including but not limited to grants, loans and
2 scholarships;

3 (2) Establishing eligibility for various economic development
4 and other incentive programs including but not limited to grants,
5 loans and gifts;

6 (3) Establishing eligibility for the issuance and possession
7 of unique trademarks for certain arts and crafts; and

8 (4) Establishing eligibility for participation or affiliation
9 in any sanctioned or recognized activity including as such may be
10 established pursuant to this article.

11 (b) The following tribes shall be officially recognized as
12 Native American Tribes of West Virginia unless added to or removed
13 from this list pursuant to the provisions of this article:

14 (1) Adena;

15 (2) Cayuga;

16 (3) Cherokee;

17 (4) Conoy;

18 (5) Delaware;

19 (6) Iroquois, including Mingo, Oneida, Onondaga and Seneca;

20 (7) Ottawa;

21 (8) Shawnee;

22 (9) Sioux, including Blackfoot and Lakota;

23 (10) Susquehannock including Honniasont;

24 (11) Tutelo including Monacan and Saponi;

1 (12) Tuscarora;

2 (13) Uninh; and

3 (14) Wyandot.

4 (c) The following Indian organizations shall be officially
5 recognized as Native American Tribes of West Virginia:

6 (1) Native American Indian Federation Incorporated; and

7 (2) The Appalachian American Indians of West Virginia
8 Incorporated.

9 **§5-30-4. Application for recognition of tribes.**

10 (a) After the enactment of this article, Native American
11 Tribes may apply for and petition for recognition of additional
12 tribes as specified pursuant to this article:

13 (1) The burden of proof is on the petitioning group, not the
14 evaluators;

15 (2) The executive director may propose rules for legislative
16 approval in accordance with the provisions of article three,
17 chapter twenty-nine-a of this code for the purpose of requiring
18 forms and describing the process for the evaluation and approval of
19 Native American Tribes;

20 (3) The executive director shall review all requests for
21 recognition of Native American Tribes;

22 (4) The executive director shall propose state recognition of
23 Native American Tribes in the form of a rule, for legislative
24 approval in accordance with the provisions of article three,

1 chapter twenty-nine-a of this code;

2 (5) The executive director may recommend approval of a request
3 for the recognition of a Native American Tribe or Native American
4 people, if:

5 (A) The tribe or people are recognized by another state or by
6 the United States Secretary of the Interior;

7 (B) The groups members have retained a specific Indian
8 identity through time;

9 (C) The group demonstrates descent from a historical Indian
10 group that lived within West Virginia's current boundaries at the
11 groups first contact with Europeans; or

12 (D) The group traces the continued existence within West
13 Virginia for four generations to the present.

14 (6) Criteria to be used in the evaluation of a request for
15 recognition may include:

16 (A) Affidavits from elderly group members that the group has
17 identified internally as "Indian";

18 (B) Affidavits by local area residents of descendants
19 testifying that the group or individual members identified
20 themselves as "Indian";

21 (C) Local, state or federal records that show the group or
22 individual members identified themselves as "Indian";

23 (D) Accounts by anthropologists that mention or describe the
24 group or individual members as "Indian" or by the name of the group

1 or individuals seeking such recognition;

2 (E) Colonial, local, state or federal records that show the
3 group, or individual members of it were identified as Indian or as
4 their ancestral tribe;

5 (F) Documents evident of the formation of an organization,
6 corporation, school, church or such institution that identified the
7 group as Indian or by the tribal name;

8 (G) Historical accounts including letters, reports, diaries or
9 other documentation describing encounters with the tribe;

10 (H) Letters or diaries from a government official describing
11 the group as Indian or by the tribal name;

12 (I) Treaties, resolutions, agreements or other governmental
13 records or correspondence pertaining to the groups lands or
14 activities, including any record of encroachment on such lands or
15 activities;

16 (J) Census records, tax records, land deeds, land patents,
17 plat books or other records mentioning the groups location, members
18 living nearby or otherwise describing such community structures;
19 and

20 (K) Genealogy records of any current member or living ancestor
21 appearing in public records as "Indian" or by group name.

22 (7) A petitioning group may be recognized if it has:

23 (A) A formally organized system of governance, with
24 established bylaws and with membership criteria restricting

1 membership to people proving genealogical descent from the historic
2 tribe or from a historic membership roll;

3 (B) A formal petition or letter of intent signed by a simple
4 majority of the members of the group seeking recognition; and

5 (C) Supporting documentation as described in this section.

6 (8) When the executive director approves a request to
7 recognize a Native American tribe, he or she shall include a
8 description of the application and documentation supporting the
9 approval in the annual report required pursuant to section one,
10 article twenty-six, chapter five of this code.

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

14 **§5-30-5. Prohibiting gambling activity; unauthorized use of name or**
15 **trademark; and penalty.**

16 (a) Nothing in this article shall be construed to imply or
17 permit gambling, gaming as regulated by the West Virginia Lottery
18 Commission pursuant to the provisions of article twenty-two,
19 article twenty-two a, article twenty-two b or article twenty-two c,
20 of chapter twenty-nine of this code.

21 (b) No person may use a trademark as issued pursuant to this
22 article nor hold themselves out to be a member of a recognized
23 tribe in this state unless such trademark or membership is
24 authorized and issued pursuant to the provisions of this article.

1 (c) A person engaging in unauthorized use of any trademark or
2 the unauthorized use of the name or reference to any recognized
3 Native American tribe of this state, is guilty of a misdemeanor
4 and, upon conviction thereof, shall be fined not more than \$2,500
5 or confined in a county or regional jail not more than six months,
6 or both fined and confined.

NOTE: The purpose of this bill is to create the West Virginia Native American Tribes Unique Recognition, Authentication and Listing Act.

This article is new; therefore, it has been completely underscored.