

1 **Senate Bill No. 377**

2 (By Senator Jenkins)

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4 [Introduced January 17, 2014; referred to the Committee on

5 Government Organization; and then to the Committee on the

6 Judiciary.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by

12 adding thereto a new article, designated §5-30-1, §5-30-2,

13 §5-30-3, §5-30-4 and §5-30-5, all relating to state

14 recognition of Native American tribes; defining terms;

15 designating certain tribes as recognized by the state;

16 establishing criteria for state recognition of additional

17 tribes; authorizing unique trademarks for certain arts and

18 crafts; prohibiting gambling; and providing penalty for

19 unauthorized use of trademark.

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

21 That the Code of West Virginia, 1931, as amended, be amended

22 by adding thereto a new article, designated §5-30-1, §5-30-2,

23 §5-30-3, §5-30-4 and §5-30-5, all to read as follows:

1 **ARTICLE 30. WEST VIRGINIA NATIVE AMERICAN TRIBES UNIQUE**
2 **RECOGNITION, AUTHENTICATION AND LISTING ACT.**

3 §5-30-1. State Recognition of Native American Tribes.

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

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

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

23 **§5-30-2. Definitions.**

1 (a) As used in this article:

2 (1) "Executive Director" means the executive director of the
3 Herbert Henderson Office of Minority Affairs as appointed by the
4 Governor pursuant to article twenty-nine of chapter five of this
5 code.

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

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

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

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

12 (D) Is a direct lineal descendant of a person listed on a
13 judgment fund distribution list, roll or census of Indians or other
14 document prepared and approved by the Secretary of the Interior or
15 his or her authorized representative, whether or not such judgment
16 fund distribution list, roll, census or document is used by an
17 Indian tribe to determine membership; or

18 (E) Is certified as a member of a recognized Indian Tribe by
19 an Indian Organization recognized by this state pursuant to the
20 provisions of this article.

21 (3) "Indian Organization" means the Native American Indian
22 Federation Incorporated, the Appalachian American Indians of West
23 Virginia Incorporated, or other nonprofit Native American

1 organization that:

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

4 (B) Is dedicated to preserving Native American principles,
5 traditions, culture, history, language and arts;

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

9 (D) Retains genealogical information collected on its members;
10 or

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

16 (4) "Indian Tribe", "Native American Tribe", or "Tribe" means
17 any Native American Indian tribe, band, nation or other organized
18 group or community which:

19 (A) Is recognized by the United States Secretary of the
20 Interior; or

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

23 (C) Is recognized by this state in, or is seeking recognition

1 pursuant to the provisions of this article.

2 (5) "Office" means the Herbert Henderson Office of Minority
3 Affairs pursuant to article twenty-nine of chapter five of this
4 code.

5 (6) "State Recognized Tribe" or "West Virginia Recognized
6 Tribe" means any Native American Indian tribe, band, nation or
7 other organized group or community as designated by this article or
8 as recognized in the initial enactment of this article or as
9 recognized pursuant to the provisions for recognition as proscribed
10 by this article.

11 (7) "Secretary" means the West Virginia Secretary of State.

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

1 **§5-30-3. Recognized Native American Tribes of West Virginia.**

2 (a) Upon enactment of this article the tribes and qualified
3 members of the tribes may be recognized as Native American tribes
4 of West Virginia and Native American peoples of West Virginia
5 including for, but not limited to, the purposes of:

6 (1) Establishing eligibility for various educational
7 opportunities, including, but not limited to, grants, loans and
8 scholarships;

9 (2) Establishing eligibility for various economic development
10 and other incentive programs including, but not limited to, grants,
11 loans and gifts;

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

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

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

20 (1) Adena;

21 (2) Cayuga;

22 (3) Cherokee;

23 (4) Conoy;

- 1 (5) Delaware;
- 2 (6) Iroquois, including Mingo, Oneida, Onondaga and Seneca;
- 3 (7) Ottawa;
- 4 (8) Shawnee;
- 5 (9) Sioux, including Blackfoot and Lakota;
- 6 (10) Susquehannock including Honniasont;
- 7 (11) Tutelo including Monacan and Saponi;
- 8 (12) Tuscarora;
- 9 (13) Uninh; and
- 10 (14) Wyandot.

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

- 13 (1) Native American Indian Federation Incorporated; and
- 14 (2) The Appalachian American Indians of West Virginia
15 Incorporated.

16 **§5-30-4. Application for recognition of tribes.**

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

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

22 (2) The executive director may propose rules for legislative
23 approval in accordance with the provisions of article three,

1 chapter twenty-nine-a of this code for the purpose of requiring
2 forms and describing the process for the evaluation and approval of
3 Native American Tribes;

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

6 (4) The executive director shall propose state recognition of
7 Native American Tribes in the form of a rule, for legislative
8 approval in accordance with the provisions of article three,
9 chapter twenty-nine-a of this code;

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

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

15 (B) The groups members have retained a specific Indian
16 identity through time;

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

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

22 (6) Criteria to be used in the evaluation of a request for
23 recognition includes:

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

3 (B) Affidavits by local area residents of descendants
4 testifying that the group or individual members identified
5 themselves as "Indian";

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

8 (D) Accounts by anthropologists that mention or describe the
9 group or individual members as "Indian" or by the name of the group
10 or individuals seeking such recognition;

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

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

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

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

21 (I) Treaties, resolutions, agreements or other governmental
22 records or correspondence pertaining to the groups lands or
23 activities, including any record of encroachment on such lands or

1 activities;

2 (J) Census records, tax records, land deeds, land patents,
3 plat books or other records mentioning the groups location, members
4 living nearby or otherwise describing such community structures;
5 and

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

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

9 (A) A formally organized system of governance, with
10 established bylaws and with membership criteria restricting
11 membership to people proving genealogical descent from the historic
12 tribe or from a historic membership roll;

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

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

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

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

1 **§5-30-5. Prohibiting gambling activity; unauthorized use of name**
2 **or trademark; and penalty.**

3 (a) Nothing in this article shall be construed to imply or
4 permit gambling, gaming as regulated by the West Virginia Lottery
5 Commission pursuant to the provisions of article twenty-two,
6 article twenty-two-a, article twenty-two-b or article twenty-two-
7 c, of chapter twenty-nine of this code.

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

12 (c) A person engaging in unauthorized use of any trademark or
13 the unauthorized use of the name or reference to any recognized
14 Native American tribe of this state, is guilty of a misdemeanor
15 and, upon conviction thereof, shall be fined not more than \$2,500
16 or confined in a county or regional jail not more than six months,
17 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, strike-throughs and
underscoring have been omitted.