

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 109**

4 (By Senators Blair and Leonhardt)

5 _____
6 [Originating in the Committee on Military;
7 reported February 12, 2015.]

**FISCAL
NOTE**

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10 A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended; and to
11 amend said code by adding thereto a new section, designated §16-2-16, all relating to local
12 indoor smoking prohibition; exempting certain veterans’ organizations and active duty
13 United States military organizations from local indoor smoking prohibition; and establishing
14 a procedure for exempting certain establishments from local indoor smoking prohibition.

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

16 That §16-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
17 and that said code be amended by adding thereto a new section, designated §16-2-16, all to read as
18 follows:

19 **ARTICLE 2. LOCAL BOARDS OF HEALTH**

20 **§16-2-11. Local board of health; powers and duties; exemption of veterans’ organizations and**
21 **active duty United States Military organizations from indoor smoking**
22 **regulations.**

1 (a) Each local board of health created, established and operated pursuant to the provisions
2 of this article shall:

3 (1) Provide the following basic public health services and programs in accordance with state
4 public health performance-based standards:

5 (A) Community health promotion, including assessing and reporting community health needs
6 to improve health status, facilitating community partnerships, including identifying the community's
7 priority health needs, mobilization of a community around identified priorities and monitoring the
8 progress of community health education services;

9 (B) Environmental health protection, including the promoting and maintaining of clean and
10 safe air, water, food and facilities and the administering of public health laws, as specified by the
11 commissioner, as to general sanitation, the sanitation of public drinking water, sewage and
12 wastewater, food and milk and the sanitation of housing, institutions and recreation; and

13 (C) Communicable or reportable disease prevention and control, including disease
14 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics and
15 prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases,
16 HIV/AIDS, tuberculosis and other communicable and reportable diseases;

17 (2) Appoint a local health officer to serve at the will and pleasure of the local board of health
18 with approval of the commissioner;

19 (3) Submit a general plan of operation to the commissioner for approval, if it receives any
20 state or federal money for health purposes. This program plan shall be submitted annually and
21 comply with provisions of the local board of health standards administrative rule;

22 (4) Provide equipment and facilities for the local health department that are in compliance

1 with federal and state law;

2 (5) Permit the commissioner to act by and through it, as needed. The commissioner may
3 enforce all public health laws of this state, the rules and orders of the secretary, any county
4 commission orders or municipal ordinances of the board's service area relating to public health and
5 the rules and orders of the local board within the service area of a local board. The commissioner
6 may enforce these laws, rules and orders when, in the opinion of the commissioner, a public health
7 emergency exists or when the local board fails or refuses to enforce public health laws and rules
8 necessary to prevent and control the spread of a communicable or reportable disease dangerous to
9 the public health. The expenses incurred shall be charged against the counties or municipalities
10 concerned;

11 (6) Deposit all moneys and collected fees into an account designated for local board of health
12 purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury
13 in the service area. The moneys for a county board of health shall be deposited with the county
14 treasury in the service area. The moneys for a combined local board of health shall be deposited in
15 an account as designated in the plan of combination: *Provided*, That nothing contained in this
16 subsection is intended to conflict with the provisions of article one, chapter sixteen of this code;

17 (7) Submit vouchers or other instruments approved by the board and signed by the local
18 health officer or designated representative to the county or municipal treasurer for payment of
19 necessary and reasonable expenditures from the county or municipal public health funds: *Provided*,
20 That a combined local board of health shall draw upon its public health funds account in the manner
21 designated in the plan of combination;

22 (8) Participate in audits, be in compliance with tax procedures required by the state and

1 annually develop a budget for the next fiscal year;

2 (9) Perform public health duties assigned by order of a county commission or by municipal
3 ordinance consistent with state public health laws; and

4 (10) Enforce the public health laws of this state and any other laws of this state applicable
5 to the local board.

6 (b) Each local board of health created, established and operated pursuant to the provisions
7 of this article may:

8 (1) Provide primary care services, clinical and categorical programs, and enhanced public
9 health services;

10 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve
11 as needed and at the will and pleasure of the local board of health. Staff and any contractors
12 providing services to the board shall comply with applicable West Virginia certification and
13 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
14 Division of Personnel, under section six, article ten, chapter twenty-nine of this code. However, any
15 local board of health may, in the alternative and with the consent and approval of the appointing
16 authority, establish and adopt a merit system for its eligible employees. The merit system may be
17 similar to the state merit system and may be established by the local board by its order, subject to
18 the approval of the appointing authority, adopting and making applicable to the local health
19 department all, or any portion of any order, rule, standard or compensation rate in effect in the state
20 merit system as may be desired and as is properly applicable;

21 (3) Adopt, ~~and promulgate and from time to time~~ propose and amend rules consistent with
22 state public health laws and the rules of the West Virginia State Department of Health and Human

1 Resources, that are necessary and proper for the protection of the general health of the service area
2 and the prevention of the introduction, propagation and spread of disease. All rules shall be filed
3 with the clerk of the county commission, or the clerk or the recorder of the municipality, or both, and
4 shall be kept by the clerk or recording officer in a separate book as public records;

5 (4) Accept, receive and receipt for money or property from any federal, state or local
6 governmental agency, from any other public source or from any private source, to be used for public
7 health purposes or for the establishment or construction of public health facilities;

8 (5) Assess, charge and collect fees for permits and licenses for the provision of public health
9 services: *Provided*, That permits and licenses required for agricultural activities may not be assessed,
10 charged or collected: *Provided, however*, That a local board of health may assess, charge and collect
11 all of the expenses of inspection of the physical plant and facilities of any distributor, producer or
12 pasteurizer of milk whose milk distribution, production or pasteurization facilities are located outside
13 this state, but who sells or distributes in the state, or transports, causes or permits to be transported
14 into this state, milk or milk products for resale, use or consumption in the state and in the service
15 area of the local board of health. A local board of health may not assess, charge and collect the
16 expenses of inspection if the physical plant and facilities are regularly inspected by another agency
17 of this state or its governmental subdivisions, or by an agency of another state or its governmental
18 subdivisions certified as an approved inspection agency by the commissioner. No more than one
19 local board of health may act as the regular inspection agency of the physical plant and facilities;
20 when two or more include an inspection of the physical plant and facilities in a regular schedule, the
21 commissioner shall designate one as the regular inspection agency;

22 (6) Assess, charge and collect fees for services provided by the local health department:

1 *Provided*, That fees for services shall be submitted to and approved by the commissioner;

2 (7) Contract for payment with any municipality, county or Board of Education for the
3 provision of local health services or for the use of public health facilities. Any contract shall be in
4 writing and permit provision of services or use of facilities for a period not to exceed one fiscal year.
5 The written contract may include provisions for annual renewal by agreement of the parties; and

6 (8) Retain and make available child safety car seats, collect rental and security deposit fees
7 for the expenses of retaining and making available child safety car seats, and conduct public
8 education activities concerning the use and preventing the misuse of child safety car seats: *Provided*,
9 That this subsection is not intended to conflict with the provisions of section forty-six, article fifteen,
10 chapter seventeen-c of this code: *Provided, however*, That any local board of health offering a child
11 safety car seat program or employee or agent of a local board of health is immune from civil or
12 criminal liability in any action relating to the improper use, malfunction or inadequate maintenance
13 of the child safety car seat and in any action relating to the improper placement, maintenance or
14 securing of a child in a child safety car seat.

15 (c) The local boards of health are charged with protecting the health and safety, as well as
16 promoting the interests of the citizens of West Virginia. All state funds appropriated by the
17 Legislature for the benefit of local boards of health shall be used for provision of basic public health
18 services.

19 (d) Notwithstanding any other provision of this article, a veterans' organization or active duty
20 United States Military organization, whether incorporated or unincorporated, which either belongs
21 to or is affiliated with a nationally recognized veterans organization, is exempt from rules restricting
22 smoking in indoor spaces which are adopted, promulgated or enforced by local boards of health.

1 **§16-2-16. Procedure for exempting certain establishments from local smoking prohibition;**
2 **timelines.**

3 (a) For the purposes of this section, “smoking” means inhaling, exhaling, burning, or carrying
4 any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other
5 plant. “Smoking” does not include the burning of incense in a religious ceremony.

6 (b) An establishment may be exempted from the local smoking prohibitions if it meets the
7 following requirements:

8 (1) The establishment is a pari-mutuel racing facility or a licensed racetrack, as both are
9 defined in section three, article twenty-two-a, chapter twenty-nine of this code, or a restricted access
10 adult-only facility, as defined in section three hundred twenty-eight, article twenty-two-b, chapter
11 twenty-nine of this code;

12 (2) The establishment has a permanent ventilation system that ensures a minimum air
13 exchange of six times per hour through out the indoor space and a minimum air exchange of twelve
14 times per hour in the indoor space that serves food, unless the food space is designated non-smoking;

15 (3) The smoking area will be restricted to persons twenty-one years of age or older; and

16 (4) At least ten percent of the indoor space of the area will be designated a non-smoking area.

17 (c) If an establishment meets the requirements set forth in subsection (b) of this section, then
18 the establishment may request an exemption from the local board of health where the establishment
19 is located by submitting a written request to the local board of health. The local board of health shall
20 review the request for an exemption and determine if the requirements set forth in subsection (b) of
21 this section, were met. Within thirty days of the receipt of the request for an exemption, the local
22 board of health shall submit a certificate of finding to the county commission of the county where

1 the local board of health is located.

2 (d) Within thirty days of the receipt of the certificate of finding, the county commission may

3 review and vote on the request for an exemption in a regular or special session.

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