

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 109

(By Senators Blair and Leonhardt)

[Originating in the Committee on the Judiciary;
reported February 20, 2015.]

A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-2-16, all relating to local indoor smoking prohibition; exempting certain veterans' organizations from local indoor smoking prohibition; and establishing a procedure for certain establishments to apply for exemption from local indoor smoking prohibition.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-11. Local board of health; powers and duties; exemption of veterans' organizations and active duty United States Military organizations from indoor smoking

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 © 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

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1 comply with provisions of the local board of health standards administrative rule;

2 (4) Provide equipment and facilities for the local health department that are in compliance
3 with federal and state law;

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

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

19 (7) Submit vouchers or other instruments approved by the board and signed by the local
20 health officer or designated representative to the county or municipal treasurer for payment of
21 necessary and reasonable expenditures from the county or municipal public health funds: *Provided*,

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1 That a combined local board of health shall draw upon its public health funds account in the manner
2 designated in the plan of combination;

3 (8) Participate in audits, be in compliance with tax procedures required by the state and
4 annually develop a budget for the next fiscal year;

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

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

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

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

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

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1 department all, or any portion, of any order, rule, standard or compensation rate in effect in the state
2 merit system as may be desired and as is properly applicable;

3 (3) Adopt, ~~and promulgate and from time to time~~ propose and amend rules consistent with
4 state public health laws and the rules of the West Virginia State Department of Health and Human
5 Resources that are necessary and proper for the protection of the general health of the service area
6 and the prevention of the introduction, propagation and spread of disease. All rules shall be filed
7 with the clerk of the county commission, or the clerk or the recorder of the municipality, or both, and
8 shall be kept by the clerk or recording officer in a separate book as public records;

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

12 (5) Assess, charge and collect fees for permits and licenses for the provision of public health
13 services: *Provided*, That permits and licenses required for agricultural activities may not be assessed,
14 charged or collected: *Provided, however*, That a local board of health may assess, charge and collect
15 all of the expenses of inspection of the physical plant and facilities of any distributor, producer or
16 pasteurizer of milk whose milk distribution, production or pasteurization facilities are located outside
17 this state, but who sells or distributes in the state, or transports, causes or permits to be transported
18 into this state, milk or milk products for resale, use or consumption in the state and in the service
19 area of the local board of health. A local board of health may not assess, charge and collect the
20 expenses of inspection if the physical plant and facilities are regularly inspected by another agency
21 of this state or its governmental subdivisions, or by an agency of another state or its governmental

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1 subdivisions certified as an approved inspection agency by the commissioner. No more than one
2 local board of health may act as the regular inspection agency of the physical plant and facilities;
3 when two or more include an inspection of the physical plant and facilities in a regular schedule, the
4 commissioner shall designate one as the regular inspection agency;

5 (6) Assess, charge and collect fees for services provided by the local health department:
6 *Provided*, That fees for services shall be submitted to and approved by the commissioner;

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

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

20 © The local boards of health are charged with protecting the health and safety, as well as
21 promoting the interests, of the citizens of West Virginia. All state funds appropriated by the

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1 Legislature for the benefit of local boards of health shall be used for provision of basic public health
2 services.

3 (d) Notwithstanding any other provision of this article, a veterans' organization that is
4 exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code is exempt
5 from rules restricting smoking in indoor spaces which are adopted, promulgated or enforced by local
6 boards of health.

7 **§16-2-16. Procedure for exempting certain establishments from local smoking prohibition;**
8 **timelines.**

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

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

14 (1) The establishment is: (A) A pari-mutuel racing facility or a licensed racetrack, as both are
15 defined in section three, article twenty-two-a, chapter twenty-nine of this code; (B) a restricted access
16 adult-only facility, as that term is defined in section three hundred twenty-eight, article twenty-two-b,
17 chapter twenty-nine of this code; © a fraternal beneficiary society that is exempt from federal income
18 tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended; or (D) a domestic
19 fraternal society that is exempt from federal income tax under section 501(c)(10) of the Internal
20 Revenue Code;

21 (2) The establishment has a permanent ventilation system that ensures a minimum air

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1 exchange of six times per hour throughout the indoor space and a minimum air exchange of twelve
2 times per hour in the indoor space that serves food, unless the food space is designated nonsmoking;

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

4 (4) At least ten percent of the indoor space of the area will be designated a nonsmoking area.

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

12 (d) Within thirty days of the receipt of the certificate of finding, the county commission may
13 review and vote on the request for an exemption in a regular or special session.