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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 of this
2 article shall:

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

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

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

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

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

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

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

22 (5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce
23 all public health laws of this state, the rules and orders of the secretary, any county commission orders or

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1 municipal ordinances of the board's service area relating to public health and the rules and orders of the
2 local board within the service area of a local board. The commissioner may enforce these laws, rules and
3 orders when, in the opinion of the commissioner, a public health emergency exists or when the local board
4 fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a
5 communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged
6 against the counties or municipalities concerned;

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (8) Retain and make available child safety car seats, collect rental and security deposit fees for the
21 expenses of retaining and making available child safety car seats, and conduct public education activities
22 concerning the use and preventing the misuse of child safety car seats: *Provided*, That this subsection is not
23 intended to conflict with the provisions of section forty-six, article fifteen, chapter seventeen-c of this code:

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1 *Provided, however,* That any local board of health offering a child safety car seat program or employee or
2 agent of a local board of health is immune from civil or criminal liability in any action relating to the
3 improper use, malfunction or inadequate maintenance of the child safety car seat and in any action relating
4 to the improper placement, maintenance or securing of a child in a child safety car seat.

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

8 (d) Notwithstanding any other provision of this article, a veterans' organization that is exempt from
9 federal income tax under Section 501(c)(19) of the Internal Revenue Code is exempt from rules restricting
10 smoking in indoor spaces which are adopted, promulgated or enforced by local boards of health, as long
11 as the area where smoking is permitted is restricted to persons age 18 years or older: *Provided, That each*
12 entrance to the facility shall have posted a sign of no less than eighteen inches by twenty-four inches, which
13 says "DANGER: THIS PREMISES CONTAINS TOBACCO SMOKE."

14 **§16-2-16. Procedure for exempting certain establishments from local smoking prohibition;**
15 **timelines.**

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

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

21 (1) The establishment is: (A) A pari-mutuel racing facility or a licensed racetrack, as both are
22 defined in section three, article twenty-two-a, chapter twenty-nine of this code; (B) a restricted access adult-
23 only facility, as that term is defined in section three hundred twenty-eight, article twenty-two-b, chapter

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1 twenty-nine of this code; (C) a fraternal beneficiary society that is exempt from federal income tax under
2 Section 501(c)(8) of the Internal Revenue Code of 1986, as amended; or (D) a domestic fraternal society
3 that is exempt from federal income tax under Section 501(c)(10) of the Internal Revenue Code;

4 (2) The establishment has a permanent ventilation system that ensures a minimum air exchange of
5 six times per hour throughout the indoor space and a minimum air exchange of twelve times per hour in the
6 indoor space that serves food, unless the food space is designated nonsmoking;

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

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

9 (5) Each entrance to the facility shall have posted a sign of no less than eighteen inches by twenty-
10 four inches, which says “DANGER: THIS PREMISES CONTAINS TOBACCO SMOKE.”

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

17 (d) Within thirty days of the receipt of the certificate of finding, the county commission may review
18 and vote on the request for an exemption, only after a public hearing on the proposed exemption is held,
19 in a regular or special session.