

WEST VIRGINIA LEGISLATURE
2021 THIRD EXTRAORDINARY SESSION

Introduced

House Bill 331

BY DELEGATE HANSHAW (MR. SPEAKER)

BY REQUEST OF THE EXECUTIVE

[Introduced October 11, 2021; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-2-11 and §16-2-13 of the Code of West Virginia, 1931, as
2 amended, all relating to the role of appointing authorities or county boards of education as
3 to the rules of local boards of health; providing that any rule adopted or established by a
4 local board of health on which no action is taken by an appointing authority to approve,
5 disapprove or amend the rule within 30 days after the rule is effective, is void; providing
6 that, with respect to any rule adopted or established by a local board of health which solely
7 applies to and affects public schools, such rule shall be approved, disapproved, or
8 amended by the county board of education, instead of the appointing authority, within 30
9 days of approval of the rule by the local board of health, and any such rule on which no
10 action is taken by the county board of education within 30 days after the rule is effective,
11 is void; providing that, if there is an imminent public health emergency, approval of the
12 appointing authority or county board of education is not necessary before the rule goes
13 into effect, but the rule shall be approved or disapproved by the appointing authority or
14 county board of education within 30 days after the rule is effective, and any rule on which
15 the appointing authority or county board of education has taken no action within 30 days
16 shall be void; providing that a rule or rules subject to approval, disapproval, or amendment
17 by an appointing authority or county board of education shall mean and include any order
18 or directive issued by a local health officer which operates as a rule or a policy affecting
19 multiple people as a class within the jurisdiction subject to rules of the local board of health,
20 including, but not limited to, any order made and entered by a local health officer on or
21 after the effective date of the amendments to this section during the regular session of the
22 Legislature, 2021, and any such order or directive issued by a local health officer shall be
23 null and void if not approved by the appointing authority within 30 days following the
24 effective date of the reenactment of this section during the third extraordinary session of
25 the Legislature in 2021; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-11. Local board of health; powers and duties.

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

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

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

9 (ii) 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 (iii) 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
18 health 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
23 with federal and state law;

24 (5) Permit the commissioner to act by and through it, as needed. The commissioner may

25 enforce all public health laws of this state, the rules and orders of the secretary, any county
26 commission orders or municipal ordinances of the board's service area relating to public health,
27 and the rules and orders of the local board within the service area of a local board. The
28 commissioner may enforce these laws, rules, and orders when, in the opinion of the
29 commissioner, a public health emergency exists or when the local board fails or refuses to enforce
30 public health laws and rules necessary to prevent and control the spread of a communicable or
31 reportable disease dangerous to the public health. The expenses incurred shall be charged
32 against the counties or municipalities concerned;

33 (6) Deposit all moneys and collected fees into an account designated for local board of
34 health purposes. The moneys for a municipal board of health shall be deposited with the municipal
35 treasury in the service area. The moneys for a county board of health shall be deposited with the
36 county treasury in the service area. The moneys for a combined local board of health shall be
37 deposited in an account as designated in the plan of combination: *Provided*, That nothing
38 contained in this subsection is intended to conflict with the provisions of §16-1-1 *et seq.* of this
39 code;

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

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

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

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

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

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

55 (2) Employ or contract with any technical, administrative, clerical, or other persons, to
56 serve as needed and at the will and pleasure of the local board of health. Staff and any contractors
57 providing services to the board shall comply with applicable West Virginia certification and
58 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
59 Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the
60 alternative and with the consent and approval of the appointing authority, establish and adopt a
61 merit system for its eligible employees. The merit system may be similar to the state merit system
62 and may be established by the local board by its order, subject to the approval of the appointing
63 authority, adopting and making applicable to the local health department all, or any portion of any
64 order, rule, standard, or compensation rate in effect in the state merit system as may be desired
65 and as is properly applicable;

66 (3) (A) Adopt and promulgate and from time to time amend rules consistent with state
67 public health laws and the rules of the West Virginia State Department of Health and Human
68 Resources, that are necessary and proper for the protection of the general health of the service
69 area and the prevention of the introduction, propagation, and spread of disease.

70 (B) The commissioner shall establish a procedure by which adverse determinations by
71 local health departments may be appealed, unless otherwise provided for, for the purpose of
72 ensuring a consistent interpretation of state public health laws and rules of the Department of
73 Health and Human Resources.

74 (C) When rules are adopted, promulgated, or amended, the local board of health shall
75 place notice in the State Register and on their organization's web page setting forth a notice of
76 proposed action, including the text of the new rule or the amendment and the date, time, and

77 place for receipt of public comment.

78 (D) All rules shall be approved, disapproved, or amended and approved by the ~~county~~
79 ~~commission or~~ appointing entity authority within 30 days of approval from the local board of health,
80 and any rule on which the appointing authority has taken no action within 30 days shall be void:
81 Provided, That with respect to a rule which solely applies to and affects public schools, such rule
82 shall be approved, disapproved or amended by the county board of education, instead of the
83 appointing authority, within 30 days of approval by the local board of health, and any rule on which
84 the county board of education has taken no action within 30 days shall be void.

85 (E) All rules of a combined local board of health shall be approved, disapproved, or
86 amended and approved by each appointing ~~entity~~ authority within 30 days of approval from the
87 combined local board of health. If one appointing ~~entity~~ authority approves and another other does
88 not approve a rule from a combined local board health department, the rule is only in effect in the
89 jurisdiction of the appointing ~~entity~~ authority which approved the rule.

90 (F) An approved rule shall be filed with the clerk of the county commission or the clerk or
91 the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a
92 separate book as public records.

93 (G) A rule currently in effect is not subject to approval, unless amended, from the ~~county~~
94 ~~commission or~~ appointing authority.

95 (H) If there is an imminent public health emergency, approval of the ~~county commission,~~
96 ~~or~~ appointing authority or county board of education is not necessary before the rule goes into
97 effect, but the rule shall be approved or disapproved by the ~~county commission or~~ appointing
98 authority or county board of education within 30 days after the rules are effective, and any rule on
99 which the appointing authority or county board of education has taken no action within 30 days
100 shall be void;

101 (I) For purposes of this section, a "rule" or "rules" subject to approval, disapproval, or
102 amendment by an appointing authority or county board of education shall mean and include any

103 order or directive issued by a local health officer which operates as a rule or a policy affecting
104 multiple people as a class within the jurisdiction subject to rules of the local board of health,
105 including, but not limited to, any order made and entered by a local health officer on or after the
106 effective date of the amendments to this section during the regular session of the Legislature,
107 2021, and any such order or directive issued by a local health officer shall be null and void if not
108 approved by the appointing authority within 30 days following the effective date of the reenactment
109 of this section during the third extraordinary session of the Legislature in 2021.

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

113 (5) Assess, charge, and collect fees for permits and licenses for the provision of public
114 health services: *Provided*, That permits and licenses required for agricultural activities may not be
115 assessed, charged, or collected: *Provided, however*, That a local board of health may assess,
116 charge, and collect all of the expenses of inspection of the physical plant and facilities of any
117 distributor, producer, or pasteurizer of milk whose milk distribution, production, or pasteurization
118 facilities are located outside this state but who sells or distributes in the state, or transports,
119 causes or permits to be transported into this state, milk or milk products for resale, use or
120 consumption in the state and in the service area of the local board of health. A local board of
121 health may not assess, charge, and collect the expenses of inspection if the physical plant and
122 facilities are regularly inspected by another agency of this state or its governmental subdivisions
123 or by an agency of another state or its governmental subdivisions certified as an approved
124 inspection agency by the commissioner. No more than one local board of health may act as the
125 regular inspection agency of the physical plant and facilities; when two or more include an
126 inspection of the physical plant and facilities in a regular schedule, the commissioner shall
127 designate one as the regular inspection agency;

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

129 *Provided*, That fees for services shall be submitted to and approved by the commissioner:
130 *Provided, however*, That a local health department may bill health care service fees to a payor
131 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the
132 Public Employees Insurance Agency for medical services provided: *Provided further*, That health
133 care service fees billed by a local health department are not subject to commissioner approval
134 and may be at the payor's maximum allowable rate;

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

140 (8) Retain and make available child safety car seats, collect rental and security deposit
141 fees for the expenses of retaining and making available child safety car seats, and conduct public
142 education activities concerning the use and preventing the misuse of child safety car seats:
143 *Provided*, That this subsection is not intended to conflict with the provisions of §17C-15-46 of this
144 code: *Provided, however*, That any local board of health offering a child safety car seat program
145 or employee or agent of a local board of health is immune from civil or criminal liability in any
146 action relating to the improper use, malfunction, or inadequate maintenance of the child safety
147 car seat and in any action relating to the improper placement, maintenance, or securing of a child
148 in a child safety car seat.

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

153 (d) If the Governor declares a statewide public health emergency, the state health officer
154 may develop emergency policies and guidelines that each of the local health departments

155 responding to the emergency must comply with in response to the public health emergency.

§16-2-13. Local health officer; powers and duties.

1 (a) A local health officer serves as the executive officer of the local board and under its
2 supervision, a local health officer shall administer the provisions of this article, all other laws of
3 this state and the rules and orders of the secretary of the department relating to public health and
4 applicable to the local board's service area, any county commission orders and municipal
5 ordinances of the board's service area relating to public health, and the rules and orders of the
6 local board.

7 (b) A local health officer has the following additional powers and duties which may be
8 delegated with the approval of the board:

9 (1) To attend local board meetings as a nonvoting member. A local health officer serves
10 as secretary at all board meetings and is responsible for maintaining the board's offices, meeting
11 minutes and records;

12 (2) To supervise and direct the activities of the local board's health services, employees
13 and facilities;

14 (3) To ensure that procedures are established for the receipt of communicable or
15 reportable disease reports from local physicians and other reporting sources and for the
16 transmittal of the reports to the commissioner;

17 (4) To perform mandatory HIV tests on persons convicted of sex-related offenses and
18 resident within the service area; and

19 (5) To determine when sufficient corrections have been made to warrant removal of any
20 restrictions or limitations placed on an individual or entity for public health purposes by an
21 employee of the local board of health.

22 (c) Any order or directive issued by a local health officer which operates as a rule or a
23 policy affecting multiple people as a class within the jurisdiction subject to rules of the local board
24 of health, including, but not limited to, any order made and entered by a local health officer on or

25 after the effective date of the amendments to §16-2-11 of this code during the regular session of
26 the Legislature, 2021, shall be subject to approval, disapproval, or amendment by an appointing
27 authority or county board of education pursuant to §16-2-11 of this code within 30 days following
28 the effective date of the reenactment of this section in the third extraordinary session of the
29 Legislature in 2021.

NOTE: The purpose of this bill is to make any rule of a local health board which has not been approved, disapproved, or amended and approved by the appropriate local elected board (county commission, municipality, or county board of education) within 30 days of approval from the local board of health, void; and to include orders and directives made by local health officer which operates as a rule or policy affecting multiple people as a class within the jurisdiction subject to the process for approval, disapproval, or amendment by the local elected body.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.