

**Senate Bill No. 382**

(By Senators Blair and Cookman)

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[Introduced January 20, 2014; referred to the Committee on  
Military; and then to the Committee on Health and Human  
Resources.]  
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**FISCAL  
NOTE**

A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended, relating to exempting certain veterans' organizations and active duty United States military organizations from local health boards' regulations restricting indoor smoking.

*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 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**

1                   **regulations.**

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

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

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

13           (ii) Environmental health protection including the promoting  
14 and maintaining of clean and safe air, water, food and facilities  
15 and the administering of public health laws as specified by the  
16 commissioner as to general sanitation, the sanitation of public  
17 drinking water, sewage and wastewater, food and milk, and the  
18 sanitation of housing, institutions, and recreation; and

19           (iii) Communicable or reportable disease prevention and  
20 control including disease surveillance, case investigation and  
21 follow-up, outbreak investigation, response to epidemics, and  
22 prevention and control of rabies, sexually transmitted diseases,  
23 vaccine preventable diseases, HIV/AIDS, tuberculosis and other

1 communicable and reportable diseases;

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

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

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

12       (5) Permit the commissioner to act by and through it, as  
13 needed. The commissioner may enforce all public health laws of this  
14 state, the rules and orders of the secretary, any county commission  
15 orders or municipal ordinances of the board's service area relating  
16 to public health, and the rules and orders of the local board  
17 within the service area of a local board. The commissioner may  
18 enforce these laws, rules and orders when, in the opinion of the  
19 commissioner, a public health emergency exists or when the local  
20 board fails or refuses to enforce public health laws and rules  
21 necessary to prevent and control the spread of a communicable or  
22 reportable disease dangerous to the public health. The expenses  
23 incurred shall be charged against the counties or municipalities

1 concerned;

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

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

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

22       (9) Perform public health duties assigned by order of a county  
23 commission or by municipal ordinance consistent with state public

1 health laws; and

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

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

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

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

1 properly applicable;

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

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

16       (5) Assess, charge and collect fees for permits and licenses  
17 for the provision of public health services: *Provided*, That permits  
18 and licenses required for agricultural activities may not be  
19 assessed, charged or collected: *Provided, however*, That a local  
20 board of health may assess, charge and collect all of the expenses  
21 of inspection of the physical plant and facilities of any  
22 distributor, producer or pasteurizer of milk whose milk  
23 distribution, production or pasteurization facilities are located

1 outside this state but who sells or distributes in the state, or  
2 transports, causes or permits to be transported into this state,  
3 milk or milk products for resale, use or consumption in the state  
4 and in the service area of the local board of health. A local board  
5 of health may not assess, charge and collect the expenses of  
6 inspection if the physical plant and facilities are regularly  
7 inspected by another agency of this state or its governmental  
8 subdivisions or by an agency of another state or its governmental  
9 subdivisions certified as an approved inspection agency by the  
10 commissioner. No more than one local board of health may act as the  
11 regular inspection agency of the physical plant and facilities;  
12 when two or more include an inspection of the physical plant and  
13 facilities in a regular schedule, the commissioner shall designate  
14 one as the regular inspection agency;

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

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

1 and

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

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

21       (d) Notwithstanding any other provision of this article, a  
22 veterans' organization, or active duty United States military  
23 organization, whether incorporated or unincorporated, which either



1 belongs to or is affiliated with a nationally recognized veterans  
2 organization, is exempt from regulations restricting smoking in  
3 indoor spaces which are adopted, promulgated, or enforced by local  
4 boards of health.

NOTE: This bill creates a new subsection of §16-2-11, providing for the exemption of certain veterans' organizations and active duty United States military organizations from indoor smoking regulations adopted by local boards of health.

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