

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 608

BY SENATORS TRUMP, WOELFEL, WELD, GAUNCH AND

PLYMALE

[Introduced March 15, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §2-2-10 of the Code of West Virginia, 1931, as amended, relating
2 to clarifying that regulatory, noncriminal legislative enactments prohibiting a type or types
3 of businesses, or business structures are inapplicable to lawful businesses and business
4 structures operating in this state prior to the effective date of the prohibiting enactment;
5 and updating provisions.

Be it enacted by the Legislature of West Virginia:

1 That §2-2-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF
STATUTES; DEFINITIONS.**

§2-2-10. Rules for construction of statutes.

1 The following rules shall be observed in the construction of statutes, unless a different
2 intent on the part of the Legislature ~~be~~ is apparent from the context:

3 (a) A word importing the singular number only may be applied to several persons or things,
4 as well as to one person or thing; a word importing the plural number only may be applied to one
5 person or thing as well as to several; and a word importing the masculine gender only may be
6 applied to females as well as males;

7 (b) Words purporting to give a joint authority to three or more persons confer ~~such~~ the
8 authority upon a majority of them, and not upon any less number;

9 (c) The words "written" or "in writing" include any representation of words, letters or figures,
10 whether by printing, engraving, writing or otherwise. But when the signature of any person is
11 required, it must be in his or her own proper handwriting, or his or her mark, attested, proved or
12 acknowledged: *Provided*, That unless a provision of this code specifically provides otherwise, an
13 electronic signature satisfies this signature requirement if the electronic signature meets the
14 requirements of ~~subsection (a), section three, article five, chapter thirty nine~~ section two, article

15 one, chapter thirty-nine-a of this code;

16 (d) The words “preceding”, “succeeding” or “following” used in reference to any section or
17 sections of a chapter or statute, mean next preceding, next succeeding or next following that in
18 which such the reference is made, unless a different interpretation be required by the context;

19 (e) An officer ~~shall be deemed to have~~ has qualified when he or she has done all that is
20 required by law to be done before proceeding to exercise the authority and discharge the duties
21 of his or her office;

22 (f) The words “the Governor” are equivalent to “the executive of the state” or “the person
23 having the executive power”;

24 (g) “Justice” or “justices” as used in article one, chapter fifty-one of this code and in other
25 references to a member or members of the Supreme Court of Appeals ~~shall~~ means and applies
26 to a judge or the judges of ~~said~~ that court as provided ~~for~~ in the Constitution of West Virginia. The
27 word “justice” in ~~any~~ most any other context is equivalent to the word “magistrate”, except when
28 used as an historical reference to the words “justice of the peace”. ~~and~~ The word “notary” is
29 equivalent to “notary public”;

30 (h) The word “state”, when applied to a part of the United States and not restricted by the
31 context, includes the District of Columbia and the several territories, and the words “United States”
32 also include the said district and territories;

33 (i) The word “person” or “whoever” ~~shall include~~ includes corporations, societies,
34 associations and partnerships, and other similar legal business organizations authorized by the
35 Legislature, if not restricted by the context;

36 (j) The words “personal representative” include the executor of a will, the administrator of
37 the estate of a deceased person, the administrator of such estate with the will annexed, the
38 administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer
39 lawfully charged with the administration of the estate of a deceased person, and every other
40 curator or committee of a decedent’s estate for or against whom suits may be brought for causes

41 of action which accrued to or against such decedent;

42 (k) The word “will” embraces a testament, a codicil, an appointment by will or writing in the
43 nature of a will in exercise of a power, also any other testamentary disposition;

44 (l) The word “judgment” includes decrees and orders for the payment of money or the
45 conveyance or delivery of land or personal property, or some interest therein, or any undertaking,
46 bond or recognizance which has the legal effect of a judgment;

47 (m) The words “under disability” include persons under the age of eighteen years, insane
48 persons and convicts while confined in ~~the penitentiary~~ a correctional facility;

49 (n) The words “insane person” include everyone who has mental illness as defined in
50 section two, article one, chapter twenty-seven of this code;

51 (o) The word “convict” means a person confined in ~~the~~ a penitentiary or correctional facility
52 of this or any other state, or of the United States;

53 (p) The word “land” or “lands” and the words “real estate” or “real property” include lands,
54 tenements and hereditaments, all rights thereto and interests therein except chattel interests;

55 (q) The words “personal estate” or “personal property” include goods, chattels, real and
56 personal, money, credits, investments and the evidences thereof;

57 (r) The word “property” or “estate” embraces both real and personal estate;

58 (s) The word “offense” includes every act or omission for which a fine, forfeiture or
59 punishment is imposed by law;

60 (t) The expression “laws of the state” includes the Constitution of West Virginia and the
61 Constitution of the United States, and treaties and laws made in pursuance thereof;

62 (u) The word “town” includes a city, village or town, and the word “council”, any body or
63 board, whether composed of one or more branches, who are authorized to make ordinances for
64 the government of a city, town or village;

65 (v) When a council of a town, city or village, or any board, number of persons or
66 corporations, are authorized to make ordinances, bylaws, rules, regulations or orders, ~~it shall be~~

67 ~~understood that~~ the same must be consistent with the laws of this state;

68 (w) The words "county court" include any existing tribunal created in lieu of a county ~~court~~
69 commission; the words "commissioner of the county court" and "county commissioner" mean, and
70 have reference to, the commissioners, or one of them, composing ~~the a~~ county ~~court~~ commission
71 in pursuance of section ~~twenty-two~~ nine, article ~~eight~~ IX of the Constitution, as amended, or any
72 existing tribunal created in lieu of a county ~~court~~ commission;

73 (x) The word "horse" embraces a stallion, a mare and a gelding;

74 (y) The words "railroad" and "railway" ~~shall be construed by the courts of this state to mean~~
75 mean the same thing in law; and, in any proceeding ~~wherein~~ in which a railroad company or a
76 railway company is a party, it ~~shall~~ is not be ~~deemed~~ an error to call a railroad company a railway
77 company or vice versa; nor ~~shall~~ may any demurrer, plea or any other defense be set up to a
78 motion, pleading or indictment in consequence of ~~such~~ the misdescription;

79 (z) The sectional headings or headlines of the several sections of this code printed in
80 black-faced type are intended as mere catchwords to indicate the contents of the section and
81 ~~shall~~ are not be ~~deemed or taken to be~~ titles of ~~such~~ the sections, or ~~as~~ any part of the statute,
82 and, unless expressly so provided, they ~~shall~~ are not be ~~so deemed~~ part of the statute when ~~any~~
83 ~~of such~~ the sections, including the headlines, are amended or reenacted;

84 (aa) The words "infant" and "minor" mean persons under the age of eighteen years as
85 ~~such words are~~ used in this code or in rules and regulations promulgated by the Supreme Court
86 of Appeals;

87 (bb) A statute is presumed to be prospective in its operation unless expressly made
88 retrospective;

89 (cc) Unless there is a provision in a section, article or chapter of this code specifying that
90 ~~the~~ its provisions ~~thereof shall~~ are not be severable, the provisions of every section, article or
91 chapter of this code, whether enacted before or subsequent to the effective date of this
92 subdivision, ~~shall be~~ are severable so that if any provision of any ~~such~~ section, article or chapter

93 is held to be unconstitutional or void, the remaining provisions of ~~such the~~ section, article or
94 chapter ~~shall~~ remain valid, unless the court finds the valid provisions are so essentially and
95 inseparably connected with, and so dependent upon, the unconstitutional or void provision that
96 the court cannot presume the Legislature would have enacted the remaining valid provisions
97 without the unconstitutional or void one, or unless the court finds the remaining valid provisions,
98 standing alone, are incomplete and are incapable of being executed in accordance with the
99 legislative intent: *Provided*, That if any ~~such~~ section, article or chapter of this code has its own
100 severability clause, then ~~such that~~ severability clause ~~shall govern and control~~ governs and
101 controls with respect to ~~such that~~ section, article or chapter in lieu of the provisions of this
102 subdivision. The provisions of this subdivision ~~shall be~~ are fully applicable to all future
103 amendments or additions to this code, with like effect as if the provisions of this subdivision were
104 set forth in extenso in every ~~such~~ amendment or addition and were reenacted as a part thereof,
105 unless ~~such the~~ amendment or addition contains its own severability clause;

106 (dd) A reference to any section, article or chapter of this code applies to all reenactments,
107 revisions or amendments thereof;

108 (ee) If a statute refers to a series of numbers or letters, the first and the last numbers or
109 letters in the series are ~~deemed~~ considered to be included;

110 (ff) The words "board of regents", wherever they appear in the code, mean the ~~board of~~
111 ~~trustees created by section one, article one, chapter eighteen-b of this code and the board of~~
112 ~~directors created by section one, article one, chapter eighteen-b~~ Higher Education Policy
113 Commission created in article one-b, chapter eighteen-b of this code or the West Virginia Council
114 for Community and Technical College Education created in article two-b of said chapter unless
115 the term is used in relation to activities conducted solely by an institution or institutions governed
116 by article ~~two~~ two-a of said chapter in which case it only means the board of ~~trustees or where~~
117 ~~the term is used in relation to activities conducted solely by an institution or institutions governed~~
118 ~~by article three, chapter eighteen-b of the code in which case it only means the board of directors~~

119 governors of the specific institution or institutions;
120 (gg) No legislative enactment of a regulatory, noncriminal nature may be construed to
121 prohibit a lawful business or business structure in existence and operating in this state prior to the
122 effective date of the enactment of legislation prohibiting the operation of such business or
123 business structure absent an express legislative declaration in the enactment that the existing
124 business or business structure is prohibited from continuing after the effective date of the
125 enactment.

NOTE: The purpose of this bill is to clarify that lawful businesses or business structures operating in this state are unaffected by enactment of prohibitory legislation absent express language in the enactment prohibiting the continued operation of the business or use of a business structure.

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