

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 332**

BY SENATORS STOLLINGS, OJEDA, PALUMBO, TAKUBO,  
AND PLYMALE

[Introduced January 19, 2018; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating  
 2 to rule-making authority of the Secretary of the Department of Health and Human  
 3 Resources; and requiring rules to regulate a local health department’s operation and  
 4 establishment of clean syringe exchange programs.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§16-1-4. Proposal of rules by the secretary.**

1 (a) The secretary may propose rules in accordance with the provisions of §29A-3-1 *et seq.*  
 2 of this code that are necessary and proper to effectuate the purposes of this chapter.

3 (b) The secretary may appoint or designate advisory councils of professionals in the areas  
 4 of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health  
 5 and intellectual disability centers and any other areas necessary to advise the secretary on rules.

6 ~~(b)~~ (c) The rules may include, but are not limited to, the regulation of:

7 (1) Land usage endangering the public health: *Provided*, That no rules may be  
 8 promulgated or enforced restricting the subdivision or development of any parcel of land within  
 9 which the individual tracts, lots or parcels exceed two acres each in total surface area and which  
 10 individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet  
 11 even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total  
 12 surface area, and which tracts are sold, leased or utilized only as single-family dwelling units.  
 13 Notwithstanding the provisions of this subsection, nothing in this section may be construed to  
 14 abate the authority of the department to:

15 (A) Restrict the subdivision or development of a tract for any more intense or higher density  
 16 occupancy than a single-family dwelling unit;

17 (B) Propose or enforce rules applicable to single-family dwelling units for single-family  
 18 dwelling unit sanitary sewerage disposal systems; or

19 (C) Restrict any subdivision or development which might endanger the public health, the

20 sanitary condition of streams or sources of water supply;

21 (2) The sanitary condition of all institutions and schools, whether public or private, public  
22 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open  
23 to the general public and inviting public patronage or public assembly, or tendering to the public  
24 any item for human consumption and places where trades or industries are conducted;

25 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources  
26 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel  
27 connected with any of those facilities, without regard to whether the supplies or systems are  
28 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage  
29 systems, sewage treatment plants, excreta disposal methods and swimming pools in this state,  
30 whether publicly or privately owned;

31 (4) Safe drinking water, including:

32 (A) The maximum contaminant levels to which all public water systems must conform in  
33 order to prevent adverse effects on the health of individuals and, if appropriate, treatment  
34 techniques that reduce the contaminant or contaminants to a level which will not adversely affect  
35 the health of the consumer. The rule shall contain provisions to protect and prevent contamination  
36 of wellheads and well fields used by public water supplies so that contaminants do not reach a  
37 level that would adversely affect the health of the consumer;

38 (B) The minimum requirements for: Sampling and testing; system operation; public  
39 notification by a public water system on being granted a variance or exemption or upon failure to  
40 comply with specific requirements of this section and rules promulgated under this section; record  
41 keeping; laboratory certification; as well as procedures and conditions for granting variances and  
42 exemptions to public water systems from state public water systems rules; and

43 (C) The requirements covering the production and distribution of bottled drinking water  
44 and may establish requirements governing the taste, odor, appearance and other consumer  
45 acceptability parameters of drinking water;

46 (5) Food and drug standards, including cleanliness, proscription of additives, proscription  
47 of sale and other requirements in accordance with §16-7-1 *et seq.* of this code as are necessary  
48 to protect the health of the citizens of this state;

49 (6) The training and examination requirements for emergency medical service attendants  
50 and emergency medical care technician-paramedics; the designation of the health care facilities,  
51 health care services and the industries and occupations in the state that must have emergency  
52 medical service attendants and emergency medical care technician-paramedics employed and  
53 the availability, communications and equipment requirements with respect to emergency medical  
54 service attendants and to emergency medical care technician-paramedics. Any regulation of  
55 emergency medical service attendants and emergency medical care technician- paramedics may  
56 not exceed the provisions of §16-4C-1 *et seq.* of this code;

57 (7) The health and sanitary conditions of establishments commonly referred to as bed and  
58 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment  
59 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may  
60 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer  
61 rooms to install a restaurant-style or commercial food service facility. The secretary may not  
62 require an owner of a bed and breakfast providing sleeping accommodations of more than six  
63 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast  
64 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

65 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,  
66 laboratory service fees, environmental health service fees, health facility fees and permit fees;

67 (9) The collection of data on health status, the health system and the costs of health care;

68 ~~(e)~~ (d) The secretary shall propose a rule for legislative approval in accordance with the  
69 provisions of §29A-3-1 *et seq.* of this code for the distribution of state aid to local health  
70 departments and basic public health services funds.

71 (1) The rule shall include the following provisions:

72           (A) Base allocation amount for each county;

73           (B) Establishment and administration of an emergency fund of no more than two percent  
74 of the total annual funds of which unused amounts are to be distributed back to local boards of  
75 health at the end of each fiscal year;

76           (C) A calculation of funds utilized for state support of local health departments;

77           (D) Distribution of remaining funds on a per capita weighted population approach which  
78 factors coefficients for poverty, health status, population density and health department  
79 interventions for each county and a coefficient which encourages counties to merge in the  
80 provision of public health services;

81           (E) A hold-harmless provision to provide that each local health department receives no  
82 less in state support for a period of four years beginning in the 2009 budget year.

83           (2) The Legislature finds that an emergency exists and, therefore, the secretary shall file  
84 an emergency rule to implement the provisions of this section pursuant to the provisions of §29A-  
85 3-15 of this code. The emergency rule is subject to the prior approval of the Legislative Oversight  
86 Commission on Health and Human Resources Accountability prior to filing with the Secretary of  
87 State.

88           (e) The secretary shall propose a rule for legislative approval in accordance with the  
89 provisions of §29A-3-1 et seq. of this code for a clean syringe exchange program operated by a  
90 local health department. This rule shall include standards, practices and operational  
91 requirements. A local health department, including the local health officer, that operates a clean  
92 syringe exchange program in compliance with a legislative rule promulgated in accordance with  
93 this subdivision is immune from any civil or criminal liability arising out of any act or omission  
94 resulting from the clean syringe exchange program unless the act or omission was the result of  
95 gross negligence or willful misconduct. The Legislature finds that for the purposes of §29A-3-15  
96 of this code, an emergency exists requiring the promulgation of an emergency rule to preserve  
97 the public peace, health, safety, or welfare and to prevent substantial harm to the public interest.

98           ~~(d)~~ (f) The secretary may propose rules for legislative approval that may include the  
99 regulation of other health-related matters which the department is authorized to supervise and for  
100 which the rule-making authority has not been otherwise assigned.

NOTE: The purpose of this bill is to grant rule-making authority to the Secretary of the Department of Health and Human Resources to regulate local health departments operation and establishment of clean syringe exchange programs.

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