

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4797

BY DELEGATES CAPITO, PUSHKIN, MILLER, WESTFALL

AND NELSON

[Passed March 7, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §8-12-16 of the Code of West Virginia, 1931, as amended, relating
2 to authorizing municipalities to enact ordinances that allow the municipal court to place a
3 structure, dwelling or building into receivership under certain circumstances.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES, AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES, AND MUNICIPAL
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition,
etc., of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous,
or detrimental to the public safety or welfare; procedures.**

1 (a) For the purposes of this section:

2 (1) "Code enforcement agency" means either a code enforcement department as defined
3 by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c)
4 of this section.

5 (2) "Code enforcement agency official" means any lawful agent of a code enforcement
6 agency.

7 (3) "Owner" or "landowner" means a person who individually or jointly with others:

8 (A) Has legal title to the property, with or without actual possession of the property;

9 (B) Has charge, care, or control of the property as owner or agent of the owner;

10 (C) Is an executor, administrator, trustee, or guardian of the estate of the owner;

11 (D) Is the agent of the owner for the purpose of managing, controlling, or collecting rents;

12 or

13 (E) May control or direct the management or disposition of the property.

14 (4) "Unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare" means:

15 (A) Any door, aisle, passageway, stairway, exit, or other means of egress that does not
16 conform to the approved building or fire code of the jurisdiction as related to the requirements for
17 existing buildings;

18 (B) The walking surface of any aisle, passageway, stairway, exit, or other means of egress
19 is so warped, worn loose, torn, or otherwise unsafe as to not provide safe and adequate means
20 of egress;

21 (C) Any portion of a dwelling, building, structure, or appurtenance that has been damaged
22 by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other
23 cause to an extent that it is likely to partially or completely collapse, or to become detached or
24 dislodged;

25 (D) Any portion of a structure or building, or any member, appurtenance, or ornamentation
26 on the exterior that is not of sufficient strength or stability, or is not so anchored, attached, or
27 fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the
28 original designed value;

29 (E) The dwelling, building, or structure, or part of the building or structure, because of
30 dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion
31 of the ground necessary for the support, or for any other reason, is likely to partially or completely
32 collapse, or some portion of the foundation or underpinning of the dwelling, building or structure
33 is likely to fail or give way;

34 (F) The dwelling, building, or structure, or any portion, is clearly unsafe for its use;

35 (G) The dwelling, building, or structure is neglected, damaged, dilapidated, unsecured, or
36 abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants,
37 criminals, and criminal activity, or enables persons to resort to the dwelling, building, or structure
38 for committing a nuisance or an unlawful act;

39 (H) Any dwelling, building, or structure constructed, exists or is maintained in violation of
40 any specific requirement or prohibition applicable to any dwelling, building, or structure provided

41 by the approved building or fire code of the jurisdiction or of any law or ordinance that presents
42 either a substantial risk of fire, building collapse, or any other threat to life and safety;

43 (I) A dwelling, building, or structure, used or intended to be used for dwelling purposes,
44 because of inadequate maintenance, dilapidation, decay, contamination by any hazardous
45 substance or material, including, but not limited to, substance resulting from the illegal
46 manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation,
47 mechanical, or plumbing system, or otherwise, is determined by the code enforcement agency to
48 be unsanitary, unfit for human habitation, or in a condition that is likely to cause sickness or
49 disease;

50 (J) Any dwelling, building, or structure, because of a lack of sufficient or proper fire
51 resistance-rated construction, fire protection systems, electrical system, fuel connections,
52 mechanical system, plumbing system, or other cause, is determined by the code official to be a
53 threat to life or health; or

54 (K) Any portion of a building that remains on a site after the demolition or destruction of
55 the building or structure, or whenever any building or structure is abandoned.

56 (b) Plenary power and authority are hereby conferred upon every municipality adopt
57 ordinances regulating the repair, alteration, or improvement, or the vacating and closing or
58 removal or demolition, or any combination, of any structure, dwelling, or building, whether used
59 for human habitation or not, that is unsafe, unsanitary, dangerous, or detrimental to the public
60 safety or welfare.

61 (c) In formally adopting any ordinance under this section, the governing body shall
62 designate the enforcement agency, which shall consist of the code enforcement agency as
63 provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or
64 municipal officials as may otherwise be authorized by this code; or municipal officials or agents
65 as authorized by rules promulgated by the State Fire Commission and approved by the
66 Legislature; or municipal officials or agents as may otherwise be authorized by the State Fire

67 Commission. Notwithstanding any provision of this code to the contrary, for the purposes of this
68 section any municipality that has not adopted the state building code may designate an
69 enforcement agency consisting of the mayor, the municipal engineer or building inspector, and
70 one member at large, to be selected by and to serve at the will and pleasure of the mayor, and
71 the ranking health officer and fire chief or their designees, who shall serve as ex officio members
72 of the enforcement agency.

73 (d) Any ordinance adopted under the provisions of this section must provide fair and
74 equitable rules of procedure and any other procedures required by law or necessary and
75 appropriate to guide the code enforcement agency, or its officials, in the investigation of any
76 structure, dwelling, or building conditions, and in any corrective action taken by the code
77 enforcement agency.

78 (e) When a code enforcement agency official enters the premises of the property for
79 investigating or inspecting any structure, dwelling, or building, the investigation shall be performed
80 to minimize the inconvenience to the owner or persons in possession and shall be consistent with
81 the following:

82 (1) Except in exigent circumstances and as permitted by law, the enforcement agency
83 shall provide reasonable advance notice to the owner and request permission from the owner to
84 enter the property;

85 (2) If the owner cannot be located after reasonable inquiry by the code enforcement
86 agency as required by this section, or if the owner refuses entry, the code enforcement agency
87 may obtain an administrative search warrant from either the municipal court or the magistrate
88 court located in the jurisdiction of the municipality or county where the structure, dwelling, or
89 building is located. Before obtaining an administrative search warrant, a code enforcement
90 agency official is required to make a sworn statement and prima facie case showing that the code
91 enforcement agency was unable to gain access to the structure, dwelling, or building after

92 reasonable and good faith efforts, and that there is a legitimate and substantial safety concern
93 involving the structure, dwelling, or building that supports the requested entry;

94 (3) If granted by the court, and if the owner can be located, the code enforcement agency
95 shall provide the owner a copy of the administrative search warrant five days before entering the
96 property. If applicable, the code enforcement agency shall also provide the same notice to any
97 tenant or other person in possession of the structure, dwelling, or building; and

98 (4) Entry is for the sole purpose of inspection of the structure, dwelling, or building for
99 unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering
100 evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary
101 condition of the structure, dwelling, or building.

102 (f) The governing body of every municipality has plenary power and authority to adopt an
103 ordinance providing for the vacating, closing, removal, or demolition of any dwelling, structure or
104 building by the municipality in the absence of owner agreement or court order: *Provided*, That the
105 ordinance requires the code enforcement agency to provide lawful notice to and undertake
106 reasonable efforts to seek agreement from the owner before taking any action permitted by this
107 section and shall comply with the requirements set forth in this subsection:

108 (1) Any ordinance adopted under this subsection applies only to dwellings, structures, or
109 buildings which meet the definition of unsafe, unsanitary, dangerous, or detrimental to the public
110 safety or welfare as set forth in:

111 (A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

112 (B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided*,
113 That the dwelling, building, or structure is vacant, abandoned, or has been lawfully declared unfit
114 for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective
115 action exceeds the fair market value of the dwelling, building, or structure.

116 (2) Any ordinance adopted under this subsection must provide for the following:

117 (A) The code enforcement agency shall produce a written notice containing the date of
118 the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary,
119 dangerous, or detrimental conditions, the corrective measures required, the allotted time to
120 correct the substandard conditions and the allotted time the owner has to apply to the circuit court
121 for a temporary injunction or other similar relief restraining action by the enforcement agency.

122 (B) The notice shall be served upon the owner or landowner by conspicuously posting and
123 attaching a copy of the notice to the subject property, and by serving the notice on the owner or
124 landowner in the same manner as service of a complaint as set forth in subsection (j) of this
125 section.

126 (C) If the code enforcement agency cannot effect personal service on the owner, a code
127 enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of
128 two years, that demonstrates the structure, dwelling, or building falls within one of the categories
129 set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section and sets forth the
130 basis in reasonable detail, including documentation of same, and memorializes the code
131 enforcement agency official's efforts to contact or get permission for entry and any corrective
132 action from the owner; and the code enforcement agency shall publish notice of its intent to enter
133 the property for the purpose of demolition or correction, along with the address of the property,
134 the name of the owners and the date of the proposed action, as a Class II legal advertisement
135 consistent with the requirements of §59-3-2 of this code, the first of which shall run at least 30
136 days before the date of the proposed action by the enforcement agency, and the last being no
137 later than 20 days before the date of the proposed action by the enforcement agency.

138 (D) If there is no response to the notice by the owner or landowner in the time specified in
139 the notice, then the municipality may proceed in correction or demolition of the subject dwelling,
140 building, or structure.

141 (3) It is an absolute defense to any civil action by an owner, landowner, or tenant for
142 damages resulting from the closure, demolition, or other corrective action taken by a municipality

143 under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the
144 structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B),
145 subdivision (1), subsection (f) of this section, that the municipality followed the procedures set
146 forth in this subsection, and that the municipality had adopted the state building code at the time
147 of the closure, demolition, or other corrective action occurred.

148 (4) Any ordinance adopted under this subsection must also provide for notice to the owner
149 of the owner's right to apply to the circuit court for a temporary injunction or other similar relief
150 restraining correction or demolition by the enforcement agency. If the application is made by the
151 owner, a hearing shall be had within 20 days of the application, or as soon as reasonably possible.

152 (A) Continuances of the hearing provided for in this subdivision may be made for cause
153 only. If a continuance is granted upon request by the owner, the owner is required to pay into
154 court, in the form of a bond, any reasonable and necessary costs related to the property likely to
155 be incurred by the municipality during the continuance.

156 (B) At the conclusion of a hearing held under this subdivision, if the court finds that the
157 property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court
158 shall make and enter an order granting the relief as requested by the municipality. The court may
159 disburse any moneys paid into court by the owner in accordance with this section.

160 (g)(1) The governing body of every municipality has plenary power and authority to adopt
161 an ordinance requiring the owner of any dwelling or building under determination of the State Fire
162 Marshal, as provided in §29-3-12 of this code, or under order of the code enforcement agency of
163 the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing,
164 removing or demolishing any dwelling or building, and may file a lien against the real property in
165 question for an amount that reflects all costs incurred by the municipality for repairing, altering, or
166 improving, or of vacating and closing, removing, or demolishing any dwelling or building, or
167 structure. Any municipality that adopts an ordinance under this section may authorize the

168 municipal court to place a structure, dwelling, or building into receivership when the following
169 circumstances are present:

170 (A) The owner cannot be located after reasonable inquiry by the code enforcement agency
171 as required by this section or if the owner refuses entry,

172 (B) The code enforcement agency has obtained an administrative search warrant from
173 either the municipal court or the magistrate court located in the jurisdiction of the municipality or
174 county where the structure, dwelling, or building is located;

175 (C) Upon entry, the code enforcement agency has determined that the structure, dwelling,
176 or building is salvageable and does not require immediate demolition; and

177 (D) The code enforcement agency has proffered to the court that the structure, dwelling
178 or building will require demolition or presents a substantial threat to nearby structures, property,
179 or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired,
180 altered, or improved in the near future.

181 (2) If all of these circumstances are present, the municipal court may place the structure,
182 dwelling, or building into receivership with the municipality or another entity that is capable of
183 making the necessary repairs, alterations, and improvements to the structure, dwelling or building.
184 Any owner of the structure, dwelling, or building may petition the municipal court to terminate the
185 receivership at any time and, upon showing that the owner will either demolish the structure,
186 dwelling, or building or make the necessary repairs, alterations, and improvements to the
187 satisfaction of the code enforcement agency, the municipal court may terminate the receivership.

188 (h) Every municipality may also institute a civil action in circuit court against the landowner
189 or other responsible party to obtain an order allowing the municipality to take corrective action up
190 to and including demolition of any structure, dwelling or building that is unsafe, unsanitary,
191 dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and
192 expenses incurred by the municipality with respect to the property and for reasonable attorney
193 fees and court costs incurred in the prosecution of the action:

194 (1) No fewer than 10 days before instituting a civil action as provided in this subsection,
195 the municipality shall send notice to the landowner by certified mail, return receipt requested,
196 advising the landowner of the governing body's intention to institute such action.

197 (2) The notice shall be sent to the most recent address of the landowner of record in the
198 office of the assessor of the county where the subject property is located and to any other address
199 for the landowner as may exist on record with the municipality. If, for any reason, the certified mail
200 is returned without evidence of proper receipt, the municipality shall resend the notices by first
201 class mail, postage prepaid, and shall also post notice on the front door or other conspicuous
202 location on the subject property.

203 (i) To the extent not otherwise authorized by state law, all notices of violation or correction
204 for violations that do not fall within one of the categories set forth in paragraph (A) or (B),
205 subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality
206 that has adopted the state building code shall be served in accordance with the process set forth
207 in the state building code. All notices of violation or correction orders for violations that do not fall
208 within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this
209 section issued by a code enforcement agency of a municipality that has not adopted the state
210 building code shall be served in accordance with the law of this state concerning the service of
211 process in civil actions, except that personal service may be made by a code enforcement agency
212 official and the method of service effectuated by mail by the clerk of a court as permitted by Rule
213 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code
214 enforcement agency official and shall be posted in a conspicuous place on the property that is
215 the subject of the notice of violation or correction.

216 (j) Any violation of an ordinance adopted under this section, may be prosecuted by the
217 municipality consistent with state and local laws. Unless otherwise authorized by state law,
218 prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed
219 before a municipal judge or other municipal official with lawful authority to hear and determine

220 violations of municipal code in the municipality where the offense is alleged to have occurred.
221 Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by
222 a code enforcement agency official or municipal attorney showing reason to have reliable
223 information and belief. If from the facts stated in the complaint the municipal judge or other
224 municipal official with lawful authority to hear and determine violations of municipal code finds
225 probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.
226 A complaint lawfully authorized by this subsection along with a summons setting forth the date,
227 time, and place of appearance before a municipal judge or other municipal official with lawful
228 authority to hear and determine violations of municipal code shall be served in accordance with
229 the law of the State of West Virginia concerning the service of process in civil actions, except that
230 personal service of a summons and complaint may be made by a code enforcement agency
231 official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil
232 Procedure and delivery of the summons and complaint is refused, the code enforcement agency
233 official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity
234 being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the
235 first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the
236 summons and complaint is presumed to have been effectuated. Upon service of the summons
237 and complaint consistent with this subsection, the violation may be prosecuted consistent with
238 state and local law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor