

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4797

BY DELEGATES CAPITO, PUSHKIN, MILLER, WESTFALL

AND NELSON

[Introduced February 11, 2020; Referred to the
Committee on Political Subdivisions then the
Judiciary.]

1 A BILL 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 of
20 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 building or structure is likely to
33 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, criminal activity or enables persons to resort to the dwelling, building or structure for
38 committing a nuisance or an unlawful act;

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

41 the approved building or fire code of the jurisdiction or of any law or ordinance that presents either
42 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 such 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 to adopt
57 ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal
58 or demolition, or any combination, of any structure, dwelling or building, whether used for human
59 habitation or not, that is unsafe, unsanitary, dangerous or detrimental to the public safety or
60 welfare.

61 (c) The governing body in formally adopting any ordinance under this section 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 who shall serve as ex officio members of the enforcement
72 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.

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 condition(s), the corrective measures required, the allotted time to
120 correct the substandard condition(s) and the allotted time the owner has to apply to the circuit
121 court for a temporary injunction or other similar relief restraining action by the enforcement
122 agency.

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

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

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

142 (3) It shall be an absolute defense to any civil action by an owner, landowner or tenant for
143 damages resulting from the closure, demolition or other corrective action taken by a municipality
144 under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the
145 structure, dwelling or building falls within one of the categories set forth in paragraph (A) or (B),
146 subdivision (1), subsection (f) of this section, the municipality followed the procedures set forth in
147 this subsection and the municipality had adopted the state building code at the time of the closure,
148 demolition or other corrective action occurred.

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

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

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

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

168 municipality that adopts an ordinance under this section may authorize the municipal court to
169 place a structure, dwelling or building into receivership when the following circumstances are
170 present: (A) The owner cannot be located after reasonable inquiry by the code enforcement
171 agency as required by this section, or if the owner refuses entry; (B) the code enforcement agency
172 obtains an administrative search warrant from either the municipal court or the magistrate court
173 located in the jurisdiction of the municipality or county where the structure, dwelling or building is
174 located; (C) upon entry, the code enforcement agency determines that the structure, dwelling or
175 building is salvageable and does not require demolition; and (D) the code enforcement agency
176 proffers to the court that the structure, dwelling or building will require demolition or presents a
177 substantial threat to nearby structures, property, or residents due to risk of fire, structural
178 instability, or attractive nuisance if it is not repaired, altered, or improved in the near future. If those
179 circumstances are present, the municipal court may place the structure, dwelling or building into
180 receivership with the municipality or another entity that is capable of making the necessary
181 repairs, alterations, and improvements to the structure, dwelling or building. Any owner of the
182 structure, dwelling, or building may petition the municipal court to end the receivership at any time
183 and, upon showing that they will make the necessary repairs, alterations, and improvements to
184 the structure to the satisfaction of the code enforcement agency, the municipal court may end the
185 receivership.

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

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

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

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

214 (j) Any violation of an ordinance adopted under this section, may be prosecuted by the
215 municipality consistent with state and local laws. Unless otherwise authorized by state law,
216 prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed
217 before a municipal judge or other municipal official with lawful authority to hear and determine
218 violations of municipal code in the municipality where the offense is alleged to have occurred.
219 Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by
220 a code enforcement agency official or municipal attorney showing reason to have reliable

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

NOTE: The purpose of this bill is to authorize municipalities to place certain property into receivership under certain circumstances, upon an order of the municipal court, as an alternative to demolition.

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