

**WEST VIRGINIA LEGISLATURE**  
**2021 THIRD EXTRAORDINARY SESSION**

**Engrossed**

**Senate Bill 3026**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Introduced October 11, 2021]



1 A BILL to amend and reenact §16-2-2, §16-2-11, and §16-2-13 of the Code of West Virginia,  
2 1931, as amended, all relating to local boards of health; defining terms including  
3 “enforcement activity”, “enhanced public health services”, “guidance”, “health order”, “local  
4 health department rule”, “local rule”, and “state rule”; clarifying the authority of local health  
5 departments to adopt and promulgate local health department rules; requiring that local  
6 health department rules not acted upon by a county commission or appointing authority  
7 within 30 days of their issuance become void; exempting from the aforementioned 30-day  
8 provision local health department rules in effect on or before March 4, 2021, clarifying that  
9 a local health department rule issued in response to an imminent public health emergency  
10 may have immediate force and effect subject to the provisions of law related to review and  
11 longevity of local health department rules; clarifying that orders of the Secretary of the  
12 Department of Health and Human Resources related to public health are state rules for  
13 enforcement purposes; clarifying that local health officers have the authority to enforce  
14 state rules, local rules, and local health department rules; and clarifying local health  
15 officers’ authority to engage in enforcement activities, issue guidance, and orders.

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

**ARTICLE 2. LOCAL BOARDS OF HEALTH.**

**§16-2-2. Definitions.**

1 Unless the context in which used clearly requires a different meaning, as used in this  
2 article:

3 “Appointing authority” means the county commission or municipality, or combination  
4 thereof, that authorized the creation or combination of the local board of health, in whatever form  
5 it presently exists;

6 “Basic public health services” means those services that are necessary to protect the  
7 health of the public and that a local board of health must provide. The three areas of basic public

8 health services are communicable and reportable disease prevention and control, community  
9 health promotion, and environmental health protection;

10 "Bureau" means the Bureau for Public Health in the Department of Health and Human  
11 Resources;

12 "Clinical and categorical programs" means those services provided to individuals of  
13 specified populations and usually focus on health promotion or disease prevention. These  
14 services are not considered comprehensive health care but focus on specific health issues such  
15 as breast and cervical cancer, prenatal and pediatric health services, and home health services;

16 "Combined local board of health" is one form of organization for a local board of health  
17 and means a board of health serving any two or more counties or any county or counties and one  
18 or more municipalities within or partially within the county or counties;

19 "Commissioner" means the Commissioner of the Bureau for Public Health, who is the state  
20 health officer;

21 "Communicable and reportable disease prevention and control" is one of three areas of  
22 basic public health services each local board of health must offer. Services shall include disease  
23 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and  
24 prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases,  
25 HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

26 "Community health promotion" is one of three areas of basic public health services each  
27 local board of health must offer. Services shall include assessing and reporting community health  
28 needs to improve health status, facilitating community partnerships including identifying the  
29 community's priority health needs, mobilization of a community around identified priorities, and  
30 monitoring the progress of community health education services;

31 "County board of health" is one form of organization for a local board of health and means  
32 a local board of health serving a single county;

33 "Department" means the West Virginia Department of Health and Human Resources;

34 “Director” or “director of health” means the state health officer. Administratively within the  
35 department, the Bureau for Public Health through its commissioner carries out the public health  
36 function of the department, unless otherwise assigned by the secretary;

37 “Enforcement Activity” means the implementation or enforcement of applicable state rules,  
38 local rules, and local health department rules.

39 “Enhanced public health services” means services that focus on health promotion  
40 activities to address a major health problem in a community, are targeted to a particular population  
41 and assist individuals in this population to access the health care system, such as lead and radon  
42 abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services  
43 are services a local health department may offer;

44 “Environmental health protection” is one of three areas of basic public health services  
45 each local board of health must offer. Services shall include efforts to protect the community from  
46 environmental health risks including, inspection of housing, institutions, recreational facilities,  
47 sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and  
48 response to disease outbreaks or disasters;

49 ~~“Enhanced public health services” means services that focus on health promotion~~  
50 ~~activities to address a major health problem in a community, are targeted to a particular population~~  
51 ~~and assist individuals in this population to access the health care system, such as lead and radon~~  
52 ~~abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services~~  
53 ~~are services a local health department may offer;~~

54 “Guidance” means providing advice to a person, the public, a business, school board, or  
55 governmental entity regarding a public health issue or matter. Guidance is not a health order;

56 “Health order” means an order issued by the local health officer or local health board to  
57 protect the public health of the citizens by directing an individual or a discreet group of individuals  
58 to take a specific action to protect the health of the public or stop the spread of a communicable  
59 disease;

60 “Imminent public health emergency” means any immediate acute threat, hazard, or danger  
61 to the health of the population of the jurisdiction, whether specific or general, whether or not  
62 officially declared;

63 “Local board of health”, “local board”, or “board” means a board of health serving one or  
64 more counties or one or more municipalities or a combination thereof;

65 “Local health department” means the staff of the local board of health;

66 “Local health department rule” means a rule issued by the local board of health that has  
67 been approved by the appointing authority or was adopted prior to March 4, 2021, or a rule issued  
68 by the local board of health that may immediately go into effect because of an imminent public  
69 health emergency under §16-2-1(b)(3)(H) of this code;

70 “Local health officer” means the individual physician with a current West Virginia license  
71 to practice medicine who supervises and directs the activities of the local health department  
72 services, staff and facilities and is appointed by the local board of health with approval by the  
73 commissioner;

74 “Local rule” means an order adopted by a county commission or an ordinance adopted by  
75 a city that properly directs the local health department to implement or enforce the order or  
76 ordinance;

77 “Municipal board of health” is one form of organization for a local board of health and  
78 means a board of health serving a single municipality;

79 “Performance-based standards” means generally accepted, objective standards such as  
80 rules or guidelines against which a local health department’s level of performance can be  
81 measured;

82 “Primary care services” means health care services, including medical care, that  
83 emphasize first contact patient care and assume overall and ongoing responsibility for the patient  
84 in health maintenance and treatment of disease. Primary care services are services that local  
85 boards of health may offer if the board has determined that an unmet need for primary care

86 services exists in its service area. Basic public health services funding may not be used to support  
87 these services;

88 “Program plan” or “plan of operation” means the annual plan for each local board of health  
89 that must be submitted to the commissioner for approval;

90 “Secretary” means the Secretary of the Department of Health and Human Resources; and

91 “Service area” means the territorial jurisdiction of the local board of health; and

92 “State Rule” means a state statute, legislative rule promulgated by a state agency or an  
93 order of the secretary relating to public health that is to be enforced by a local health department.

**§16-2-11. Local board of health; powers and duties.**

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

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

5 (i) Community health promotion including assessing and reporting community health  
6 needs to improve health status, facilitating community partnerships including identifying the  
7 community’s priority health needs, mobilization of a community around identified priorities and  
8 monitoring the progress of community health education services;

9 (ii) Environmental health protection including the promoting and maintaining of clean and  
10 safe air, water, food, and facilities, and the administering of public health laws as specified by the  
11 commissioner as to general sanitation, the sanitation of public drinking water, sewage and  
12 wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

13 (iii) Communicable or reportable disease prevention and control including disease  
14 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and  
15 prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases,  
16 HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

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

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

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

24           (5) Permit the commissioner to act by and through it, as needed. The commissioner may  
25 enforce all public health laws of this state, the rules and orders of the secretary, any county  
26 commission orders or municipal ordinances of the board's service area relating to public health,  
27 and the rules and orders of the local board within the service area of a local board. The  
28 commissioner may enforce these laws, rules, and orders when, in the opinion of the  
29 commissioner, a public health emergency exists or when the local board fails or refuses to enforce  
30 public health laws and rules necessary to prevent and control the spread of a communicable or  
31 reportable disease dangerous to the public health. The expenses incurred shall be charged  
32 against the counties or municipalities concerned;

33           (6) Deposit all moneys and collected fees into an account designated for local board of  
34 health purposes. The moneys for a municipal board of health shall be deposited with the municipal  
35 treasury in the service area. The moneys for a county board of health shall be deposited with the  
36 county treasury in the service area. The moneys for a combined local board of health shall be  
37 deposited in an account as designated in the plan of combination: *Provided*, That nothing  
38 contained in this subsection is intended to conflict with the provisions of §16-1-1 *et seq.* of this  
39 code;

40           (7) Submit vouchers or other instruments approved by the board and signed by the local  
41 health officer or designated representative to the county or municipal treasurer for payment of  
42 necessary and reasonable expenditures from the county or municipal public health funds:



43 *Provided*, That a combined local board of health shall draw upon its public health funds account  
44 in the manner designated in the plan of combination;

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

47 (9) Perform public health duties assigned by order of a county commission or by municipal  
48 ordinance consistent with state public health laws; and

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

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

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

55 (2) Employ or contract with any technical, administrative, clerical, or other persons, to  
56 serve as needed and at the will and pleasure of the local board of health. Staff and any contractors  
57 providing services to the board shall comply with applicable West Virginia certification and  
58 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the  
59 Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the  
60 alternative and with the consent and approval of the appointing authority, establish and adopt a  
61 merit system for its eligible employees. The merit system may be similar to the state merit system  
62 and may be established by the local board by its order, subject to the approval of the appointing  
63 authority, adopting and making applicable to the local health department all, or any portion of any  
64 order, rule, standard, or compensation rate in effect in the state merit system as may be desired  
65 and as is properly applicable;

66 (3) (A) Adopt and promulgate and from time to time amend local health department rules  
67 consistent with ~~state public health laws and the rules of the West Virginia State Department of~~  
68 ~~Health and Human Resources~~ state rules, that are necessary and proper for the protection of the

69 general health of the service area and the prevention of the introduction, propagation, and spread  
70 of disease.

71 (B) The commissioner shall establish a procedure by which adverse determinations by  
72 local health departments may be appealed, unless otherwise provided for, for the purpose of  
73 ensuring a consistent interpretation of state ~~public health laws and rules. of the Department of~~  
74 ~~Health and Human Resources.~~

75 (C) When local health department rules are adopted, promulgated, or amended, the local  
76 board of health shall place notice in the State Register and on their organization's web page  
77 setting forth a notice of proposed action, including the text of the new local health department rule  
78 or the amendment and the date, time, and place for receipt of public comment.

79 (D) All local health department rules shall be approved, disapproved, or amended and  
80 approved by the county commission or appointing entity authority within 30 days of approval from  
81 the local board of health, and any local health department rule on which the appointing authority  
82 has taken no action within 30 days shall be void- : *Provided, That* a local health department rule  
83 issued in response to an imminent public health emergency under the provisions of paragraph  
84 (H) of this subdivision may have immediate force and effect subject to the limitations set forth  
85 therein.

86 (E) All local health department rules of a combined local board of health shall be approved,  
87 disapproved, or amended and approved by each appointing entity authority within 30 days of  
88 approval from the combined local board of health. If one appointing entity authority approves and  
89 another other does not approve a local health department rule from a combined local board health  
90 department, the local health department rule is only in effect in the jurisdiction of the appointing  
91 entity authority which approved the local health department rule- : *Provided, That* a local health  
92 department rule issued in response to an imminent public health emergency under the provisions

93 of paragraph (H) of this subdivision may have immediate force and effect subject to the limitations  
94 set forth therein.

95 (F) An approved local health department rule shall be filed with the clerk of the county  
96 commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk  
97 or recording officer in a separate book as public records.

98 (G) A local health department rule currently in effect on March 4, 2021, is not subject to  
99 approval, unless amended, from the county commission or appointing authority.

100 (H) If there is an imminent public health emergency, approval of the county commission  
101 or appointing authority is not necessary before ~~the~~ a local health department rule goes into effect  
102 but shall be approved or disapproved by the county commission or appointing authority within 30  
103 days after the local health department rules are effective, and any rule on which the appointing  
104 authority has taken no action within 30 days shall be void;

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

108 (5) Assess, charge, and collect fees for permits and licenses for the provision of public  
109 health services: *Provided*, That permits and licenses required for agricultural activities may not be  
110 assessed, charged, or collected: *Provided, however*, That a local board of health may assess,  
111 charge, and collect all of the expenses of inspection of the physical plant and facilities of any  
112 distributor, producer, or pasteurizer of milk whose milk distribution, production, or pasteurization  
113 facilities are located outside this state but who sells or distributes in the state, or transports,  
114 causes or permits to be transported into this state, milk or milk products for resale, use or  
115 consumption in the state and in the service area of the local board of health. A local board of  
116 health may not assess, charge, and collect the expenses of inspection if the physical plant and  
117 facilities are regularly inspected by another agency of this state or its governmental subdivisions  
118 or by an agency of another state or its governmental subdivisions certified as an approved

119 inspection agency by the commissioner. No more than one local board of health may act as the  
120 regular inspection agency of the physical plant and facilities; when two or more include an  
121 inspection of the physical plant and facilities in a regular schedule, the commissioner shall  
122 designate one as the regular inspection agency;

123 (6) Assess, charge, and collect fees for services provided by the local health department:  
124 *Provided*, That fees for services shall be submitted to and approved by the commissioner:  
125 *Provided, however*, That a local health department may bill health care service fees to a payor  
126 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the  
127 Public Employees Insurance Agency for medical services provided: *Provided further*, That health  
128 care service fees billed by a local health department are not subject to commissioner approval  
129 and may be at the payor's maximum allowable rate;

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

135 (8) Retain and make available child safety car seats, collect rental and security deposit  
136 fees for the expenses of retaining and making available child safety car seats, and conduct public  
137 education activities concerning the use and preventing the misuse of child safety car seats:  
138 *Provided*, That this subsection is not intended to conflict with the provisions of §17C-15-46 of this  
139 code: *Provided, however*, That any local board of health offering a child safety car seat program  
140 or employee or agent of a local board of health is immune from civil or criminal liability in any  
141 action relating to the improper use, malfunction, or inadequate maintenance of the child safety  
142 car seat and in any action relating to the improper placement, maintenance, or securing of a child  
143 in a child safety car seat.

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

148 (d) If the Governor declares a statewide public health emergency, the state health officer  
149 may develop emergency policies and guidelines that each of the local health departments  
150 responding to the emergency must comply with in response to the public health emergency.

**§16-2-13. Local health officer; powers and duties.**

1 (a) A local health officer serves as the executive officer of the local board and under its  
2 supervision, a local health officer shall administer and enforce ~~the provisions of this article, all~~  
3 ~~other laws of this state and the rules and orders of the secretary of the department relating to~~  
4 ~~public health and applicable to the local board's service area, any county commission orders and~~  
5 ~~municipal ordinances of the board's service area relating to public health and the rules and orders~~  
6 ~~of the local board.~~ state rules, local rules and local health department rules within the local board  
7 of health's service area.

8 (b) A local health officer has the following additional powers and duties which may be  
9 delegated with the approval of the board:

10 (1) To attend local board meetings as a nonvoting member. A local health officer serves  
11 as secretary at all board meetings and is responsible for maintaining the board's offices, meeting  
12 minutes and records;

13 (2) To supervise and direct the activities of the local board's health services, employees  
14 and facilities;

15 (3) To ensure that procedures are established for the receipt of communicable or  
16 reportable disease reports from local physicians and other reporting sources and for the  
17 transmittal of the reports to the commissioner;

18           (4) To perform mandatory HIV tests on persons convicted of sex-related offenses and  
19 resident within the service area; and

20           (5) To determine when sufficient corrections have been made to warrant removal of any  
21 restrictions or limitations placed on an individual or entity for public health purposes by an  
22 employee of the local board of health.

23           (c) A local health officer shall perform enforcement activity.

24           (d) A local health officer may issue guidance.

25           (e) A local health officer may issue a health order.