

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 349

BY SENATORS TARR, ROBERTS, AND RUCKER

[Introduced February 18, 2021; referred
to Committee on the Judiciary]

1 A BILL to amend and reenact §16-1-6 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §16-2-18, all relating to the
3 state and local boards of health; specifying instances when agents or employees may
4 enter a private business; limiting signage, markings, or notices; making improper entry a
5 crime; providing for criminal penalties and fines; providing for remedies by business
6 owner; limiting powers of the executive through executive order; limiting powers of
7 governmental entities; and limiting powers of counties and municipalities through local
8 ordinances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-6. Powers and duties of the commissioner.

1 The commissioner is the chief executive, administrative and fiscal officer of the Bureau for
2 Public Health and has the following powers and duties:

3 (a) To supervise and direct the fiscal and administrative matters of the bureau, and in that
4 regard and in accordance with law, employ, fix the compensation of and discharge all persons
5 necessary for the proper execution of the public health laws of this state and the efficient and
6 proper discharge of the duties imposed upon, and execution of powers vested in the
7 commissioner by law and as directed by the secretary;

8 (b) To enforce all laws of this state concerning public health; to that end, the commissioner
9 shall make, or cause to be made, investigations and inquiries respecting the cause of disease,
10 especially of epidemics and endemic conditions, and the means of prevention, suppression or
11 control of those conditions; the source of sickness and mortality, and the effects of environment,
12 employment, habits, and circumstances of life on the public health.

13 The commissioner shall further make, or cause to be made, inspections and examinations
14 of food, drink, and drugs offered for sale or public consumption in the manner the commissioner
15 considers necessary to protect the public health and shall report all violations of laws and rules

16 relating to the law to the prosecuting attorney of the county in which the violations occur;

17 (c) To make complaint or cause proceedings to be instituted against any person,
18 corporation or other entity for the violation of any public health law before any court or agency,
19 without being required to give security for costs; the action may be taken without the sanction of
20 the prosecuting attorney of the county in which the proceedings are instituted or to which the
21 proceedings relate;

22 (d) To promote the provision of essential public health services to citizens of this state;

23 (e) To monitor the administration, operation and coordination of the local boards of health
24 and local health officers;

25 (f) To develop and maintain a state plan of operation that sets forth the needs of the state
26 in the areas of public health; goals and objectives for meeting those needs; methods for achieving
27 the stated goals and objectives; and needed personnel, funds and authority for achieving the
28 goals and objectives;

29 (g) To collect data as may be required to foster knowledge on the citizenry's health status,
30 the health system and costs of health care;

31 (h) To delegate to any appointee, assistant or employee any and all powers and duties
32 vested in the commissioner, including, but not limited to, the power to execute contracts and
33 agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the
34 acts of his or her appointees, assistants and employees;

35 (i) To transfer at the direction of the secretary, notwithstanding other provisions of this
36 code, any patient or resident between hospitals and facilities under the control of the
37 commissioner and, by agreement with the state Commissioner of Corrections and otherwise in
38 accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state
39 Commissioner of Corrections;

40 (j) To make periodic reports to the Governor and to the Legislature relative to specific
41 subject areas of public health, the state facilities under the supervision of the commissioner, or

42 other matters affecting the public health of the people of the state, at the direction of the secretary;

43 (k) At the direction of the secretary, to accept and use for the benefit of the health of the
44 people of this state, any gift or devise of any property or thing which is lawfully given: *Provided,*
45 That if any gift is for a specific purpose or for a particular state hospital or facility it shall be used
46 as specified. Any profit which may arise from any gift or devise of any property or thing shall be
47 deposited in a special revenue fund with the state Treasurer and shall be used only as specified
48 by the donor or donors;

49 (l) To acquire by condemnation or otherwise any interest, right, privilege, land or
50 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
51 hospital or facility, and, by and with the consent of the Governor, and at the direction of the
52 secretary, to sell, exchange or otherwise convey any interest, right, privilege, land or improvement
53 acquired or held by the state, state hospital or state facility and deposit the proceeds from the
54 sale, exchange or other conveyance into the hospital services revenue account. Any
55 condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

56 (m) To inspect and enforce rules to control the sanitary conditions of and license all
57 institutions and health care facilities as set forth in this chapter, including, but not limited to,
58 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,
59 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places
60 open to the general public and inviting public patronage or public assembly, or tendering to the
61 public any item for human consumption and places where trades or industries are conducted;

62 (n) To make inspections, conduct hearings, and to enforce the legislative rules concerning
63 occupational and industrial health hazards, the sanitary condition of streams, sources of water
64 supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected
65 with the supplies, facilities or systems without regard to whether they are publicly or privately
66 owned; and to make inspections, conduct hearings and enforce the legislative rules concerning
67 the design of chlorination and filtration facilities and swimming pools;

68 (o) To provide in accordance with this subdivision and the definitions and other provisions
69 of §27-1A-1 *et seq.* of this code, and as directed by the secretary, for a comprehensive program
70 for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the
71 cause and prevention of alcoholism and drug abuse; for the training and employment of personnel
72 to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the
73 public concerning alcoholism and drug abuse;

74 (p) To provide in accordance with this subdivision for a program for the care, treatment
75 and rehabilitation of the parents of sudden infant death syndrome victims; for the training and
76 employment of personnel to provide the requisite rehabilitation of parents of sudden infant death
77 syndrome victims; for the education of the public concerning sudden infant death syndrome; for
78 the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden infant
79 death syndrome cases occurring in West Virginia; for the education of police, employees and
80 volunteers of all emergency services concerning sudden infant death syndrome; for the state
81 sudden infant death syndrome advisory council to develop regional family support groups to
82 provide peer support to families of sudden infant death syndrome victims; and for requesting
83 appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome
84 program;

85 (q) To establish and maintain a state hygienic laboratory as an aid in performing the duties
86 imposed upon the commissioner, and to employ chemists, bacteriologists, and other employees
87 that may be necessary to properly operate the laboratory. The commissioner may establish
88 branches of the state laboratory at any points within the state that are necessary in the interest of
89 the public health;

90 (r) To establish and fund a uniform health professionals data system to collect and
91 maintain uniform data on all health professionals in the state. This data shall include, but not be
92 limited to, the following information about each health professional: His or her name, profession,
93 the area of the state where he or she is practicing, his or her educational background, his or her

94 employer's name, and number of years practicing within the profession. The boards provided for
95 in §30-3-1 *et seq.*, §30-4-1 *et seq.*, §30-4a-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7a-1
96 *et seq.*, §30-14-1 *et seq.*, §30-14a-1 *et seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*,
97 §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-28-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-
98 1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, and §30-37-1 *et seq.* of this code shall annually
99 collect the data on health professionals under their jurisdiction in the format prescribed by the
100 commissioner. Each board shall pay to the bureau annually, an amount determined by the
101 commissioner to be a pro rata portion, for anticipated expenses to establish and operate the
102 uniform health professionals data system required by this section. The commissioner may
103 standardize data collection methods if necessary to implement the provisions of this section. The
104 commissioner shall publish annually and make available, upon request, a report setting forth the
105 data which was collected the previous year; areas of the state which the collected data indicates
106 have a shortage of health professionals; and projections, based upon the collected data, as to the
107 need for more health professionals in certain areas;

108 (s) To expend, for the purpose of performing the public health duties imposed on the
109 bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may
110 make advance payments to public and nonprofit health services providers when the commissioner
111 determines it is necessary for the initiation or continuation of public health services. The advance
112 payments, being in derogation of the principle of payment only after receipt of goods or services,
113 shall be authorized only after serious consideration by the commissioner of the necessity of the
114 advance payments and shall be for a period no greater than ninety days in advance of rendition
115 of service or receipt of goods and continuation of health services; ~~and~~

116 (t) To exercise all other powers delegated to the commissioner by the secretary or by this
117 chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities
118 necessary and incident to the authority and area of concern entrusted to the bureau or the
119 commissioner; and

120 (u) The powers and duties of the commissioner and the secretary shall be limited as set
121 forth in §16-2-18 of this code.

§16-2-18. Limitation of powers of state and local health officer related to nonpermitted businesses.

1 (a) Unless a permit is required by statute or by rule adopted pursuant to the provisions of
2 §29A-3-1 et seq., of this code no agent, contractor, or employee of the Department of Health and
3 Human Resources, the Bureau for Public Health, or a county board of health, as all are defined
4 in §16-1-2 of this code, acting in an official capacity, is permitted access to any private business
5 without a warrant issued by a court of competent jurisdiction or written permission of the owner.

6 (b) Unless a permit is required by statute or by rule adopted pursuant to the provisions of
7 §29A-3-1 et seq., of this code the Department of Health and Human Resources, the Bureau for
8 Public Health, or a county of board of health nor any agent, contractor, or employee of any of
9 these entities may require any particular signage, markings, notice, or other express
10 communication to be posted or maintained by any private business entity.

11 (c) The written notice as set forth in subsection (a) of this section shall include, but is not
12 limited to, the authorized date or dates of entry, the length of time the agent, contractor, or
13 employee is permitted on the premises, and designated areas in which the agent, contractor, or
14 employee is permitted access to. The notice shall be effective for a period of 24 hours from the
15 time in which the owner executed his or her signature unless sooner withdrawn by the owner or
16 his or her designee.

17 (d) For purposes of this section access to the private business shall mean all structures,
18 parking lots and exterior grounds associated with the business.

19 (e) The provisions of this section may not be preempted or negated by any of the following:

20 (1) The issuance of an executive order by the Governor;

21 (2) An ordinance issued by either a county or municipality;

22 (3) Any order issued by the Department of Health and Human Resources, the Secretary

23 of the Department of Health and Human Resources, the Bureau for Public Health, or the state
24 health officer; or

25 (4) Any order issued by the local board of health or the local health officer.

26 (f) Any violation of the provisions of this section by an agent, contractor, or employee of
27 the Department of Health and Human Resources, the Bureau for Public Health, or a county of
28 board of health shall be guilty of trespass as that term is defined in §61-3B-1 et seq. of this code
29 and, upon conviction, shall be fined or confined as set forth in that article.

NOTE: The purpose of this bill is to limit the powers of the Department of Health and Human Resources, the Bureau for Public Health, the state board of health and local boards of health in gaining access to entities which they do not permit as a condition of doing business.

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