

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 819

By Senators Martin, Blair (Mr. President), Azinger,
Barrett, Chapman, Clements, Deeds, Hamilton, Hunt,
Jeffries, Karnes, Maynard, Nelson, Phillips, Queen,
Roberts, Rucker, Smith, Stover, Stuart, Swope, Tarr,
Taylor, Woelfel, and Woodrum

[Introduced February 16, 2024; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §16-1-4 and §16-1-9a of the Code of West Virginia, 1931, as
 2 amended, all relating to the regulation of public water systems; and providing that the
 3 Secretary of the Department of Health may not require public water systems or businesses
 4 to have backflow preventers.

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 legislative rules in accordance with the provisions of §29A-
 2 3-1 *et seq.* of this code that include:

3 (1) Land usage endangering the public health: *Provided*, That no rules may be
 4 promulgated or enforced restricting the subdivision or development of any parcel of land within
 5 which the individual tracts, lots, or parcels exceed two acres each in total surface area and which
 6 individual tracts, lots, or parcels have an average frontage of not less than 150 feet even though
 7 the total surface area of the tract, lot, or parcel equals or exceeds two acres in total surface area,
 8 and which tracts are sold, leased, or utilized only as single-family dwelling units. Notwithstanding
 9 the provisions of this subsection, nothing in this section may be construed to abate the authority of
 10 the department to:

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

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

15 (C) Restrict any subdivision or development which might endanger the public health, the
 16 sanitary condition of streams, or sources of water supply;

17 (2) The sanitary condition of all institutions and schools, whether public or private, public
 18 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
 19 to the general public and inviting public patronage or public assembly, or tendering to the public

20 any item for human consumption and places where trades or industries are conducted;

21 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
22 of water supply: Provided, That the secretary may not promulgate rules that require a public water
23 supply system or business to have backflow preventers, sewerage facilities, and plumbing
24 systems and the qualifications of personnel connected with any of those facilities, without regard
25 to whether the supplies or systems are publicly or privately owned; and the design of all water
26 systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal
27 methods, and swimming pools in this state, whether publicly or privately owned;

28 (4) Safe drinking water, including:

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

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

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

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

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

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

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

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

65 (10) The distribution of state aid to local health departments and basic public health
66 services funds in accordance with:

67 (A) Base allocation amount for each county;

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

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

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

76 (E) The provisions of this subdivision are in effect until the performance standard funding
77 formula is created and established by legislative rule.

78 (b) The secretary shall not review any repair or modernization of equipment at a public pool
79 facility as long as such activity does not change the scope of the facility or its current use and such
80 activity does not exceed \$25,000 in planned cost.

§16-1-9a. Regulation of public water systems.

1 (a) The ~~commissioner~~ secretary shall regulate public water systems as prescribed in this
2 section.

3 (b) The ~~commissioner~~ secretary shall establish by legislative rule, in accordance with
4 §29A-3-1 *et seq.* of this code:

5 (1) The maximum contaminant levels to which all public water systems shall conform in
6 order to prevent adverse effects on the health of individuals;

7 (2) Treatment techniques that reduce the contaminant or contaminants to a level which will
8 not adversely affect the health of the consumer;

9 (3) Provisions to protect and prevent contamination of wellheads and well fields used by
10 public water supplies so that contaminants do not reach a level that would adversely affect the
11 health of the consumer;

12 (4) Minimum requirements for:

13 (A) Sampling and testing;

14 (B) System operation;

15 (C) Public notification by a public water system on being granted a variance or exemption
16 or upon failure to comply with specific requirements of this section and regulations promulgated
17 under this section;

18 (D) Recordkeeping;

19 (E) Laboratory certification; and

20 (F) Procedures and conditions for granting variances and exemptions to public water
21 systems from state public water systems' regulations;

22 (5) Requirements covering the production and distribution of bottled drinking water;

23 (6) Requirements governing the taste, odor, appearance, and other consumer
24 acceptability parameters of drinking water; and

25 ~~(7) Any requirements for a water supply system the commissioner determines is necessary~~
26 ~~to be equipped with a backflow prevention assembly, all maintenance activities must be~~
27 ~~documented and provided to the commissioner upon request; and~~

28 ~~(8) (7) Any other requirement the commissioner~~ secretary finds necessary to effectuate the
29 provisions of this article.

30 (c) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may
31 enter any part of a public water system, whether or not the system is in violation of a legal
32 requirement, for the purpose of inspecting, sampling, or testing and shall be furnished records or
33 information reasonably required for a complete inspection.

34 (d) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may
35 conduct an evaluation necessary to assure the public water system meets federal safe drinking
36 water requirements. The public water system shall provide a written response to the commissioner
37 within 30 days of receipt of the evaluation by the public water system, addressing corrective
38 actions to be taken as a result of the evaluation.

39 (e)(1) Any individual or entity who violates any provision of this article, or any of the rules or
40 orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more than
41 \$5,000. Each day's violation shall constitute a separate offense.

42 (2) For a willful violation of a provision of this article, or of any of the rules or orders issued
43 under this article, an individual or entity shall be subject to a civil penalty of not more than \$10,000
44 and each day's violation shall be grounds for a separate penalty.

45 (3) Civil penalties are payable to the ~~commissioner~~ secretary. All moneys collected under
46 this section shall be deposited into a restricted account known as the Safe Drinking Water Fund.
47 All moneys deposited into the fund shall be used by the ~~commissioner~~ secretary to provide
48 technical assistance to public water systems.

49 (f) The commissioner, or his or her authorized representative or designee, may also seek
50 injunctive relief in the circuit court of the county in which all or part of the public water system is
51 located for threatened or continuing violations.

52 (g) By July 1, 2020, a public water system supplying water to the public within the state
53 shall immediately, but in no instance later than six hours, report the occurrence and the lifting of
54 each advisory to local departments of health and to local office of emergency management 911
55 answering point.

56 (h) By January 1, 2022, a public water system shall make available to interested customers
57 boiled water advisories promptly through a text or a voice alert mass notification system.

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NOTE: The purpose of this bill is to prohibit the Secretary of the Department of Health from promulgating rules that require public water systems or businesses to have backflow preventers.

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