

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5328

By Delegates Anders and Ferrell

[Introduced February 09, 2026; referred to the
Committee on Energy and Public Works]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §16-2S-1, §16-2S-2, §16-2S-3, §16-2S-4, §16-2S-5, and §16-2S-6, all relating
 3 to the regulatory classification of bars, taverns, and restaurants; commercial wastewater
 4 standards; and septic system oversight.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2S. REGULATORY CLASSIFICATION OF BARS, TAVERNS, AND
 RESTAURANTS; COMMERCIAL WASTEWATER STANDARDS; AND SEPTIC
 SYSTEM OVERSIGHT.**

§16-2S-1. Definitions.

1 For purposes of this article:

2 (1) "Restaurant" means a commercial establishment whose primary business purpose is
 3 the preparation and sale of meals for on-premises consumption and whose gross receipts from
 4 food sales exceed 50 percent of total gross receipts.

5 (2) "Bar" or "Tavern" means a commercial establishment whose primary business purpose
 6 is the sale of alcoholic beverages for on-premises consumption and whose gross receipts from
 7 alcoholic beverage sales equal or exceed 50 percent of total gross receipts, regardless of whether
 8 food is offered.

9 (3) "Fast-food restaurant" means a restaurant offering counter service, limited customer
 10 dwell time, and standardized menu items, including national or regional chain operations.

11 (4) "Commercial entertainment venue" means a business primarily engaged in gaming,
 12 entertainment, or amusement activities in which food service is incidental.

13 (5) "Incidental food service" means food offerings provided to satisfy licensing or regulatory
 14 requirements but not constituting the primary commercial activity of the establishment.

§16-2S-2. Prohibition on menu-based regulatory classification.

1 (a) No state agency, local health department, or sanitation authority may classify a

2 commercial establishment as a restaurant solely on the basis of food items offered.

3 (b) The offering of limited hot food, appetizers, or prepared food items shall not, by itself,
4 require classification as a restaurant.

5 (c) Regulatory classification shall be based on actual business operations, including:

6 (1) Primary source of gross receipts;

7 (2) Customer dwell time;

8 (3) Seating turnover;

9 (4) Hours of food service relative to alcohol service.

§16-2S-3. Commercial wastewater and water-usage standards.

1 (a) The Department of Health shall utilize nationally recognized average water-
2 consumption standards when determining commercial wastewater and septic system
3 requirements.

4 (b) Wastewater calculations shall be based on business category, including:

5 (1) Full-service restaurants;

6 (2) Fast-food establishments;

7 (3) Bars and taverns;

8 (4) Commercial entertainment venues.

9 (c) Bars and taverns may not be regulated under full-service restaurant wastewater
10 standards unless food sales exceed the threshold established in this article.

§16-2S-4. Limitation of sanitation authority over septic systems.

11 (a) The sanitation division of the Department of Health may enforce public health
12 compliance but shall not exercise sole authority over:

13 (1) Septic system engineering design;

14 (2) Drain-field sizing methodologies;

15 (3) Soil percolation analysis;

16 (4) Septic installation techniques.

17 (b) Septic system design and approval shall be performed or reviewed by:

18 (1) Licensed professional engineers;

19 (2) Licensed septic system designers;

20 (3) Qualified soil scientists; or

21 (4) Other credentialed professionals authorized by rule.

22 (c) Sanitation inspectors may not substitute non-technical judgment for accepted
23 engineering standards.

§16-2S-5. Drain-field system differentiation and performance standards.

1 (a) The Department shall recognize distinct categories of drain-field systems, including:

2 (1) Conventional perforated pipe systems;

3 (2) Chamber systems.

4 (b) Chamber systems shall be classified by performance capability, including multiple
5 quality tiers.

6 (c) Drain-field sizing and setback requirements shall:

7 (1) Reflect system performance;

8 (2) Consider manufacturer specifications;

9 (3) Avoid applying a single standard to materially different technologies.

10 (d) No agency may impose the lowest-performance standard across all chamber systems
11 absent technical justification.

§16-2S-6. Rulemaking.

1 (a) The Department of Health shall promulgate rules consistent with this article within one
2 hundred eighty days, provided such rules:

3 (1) Do not expand agency authority beyond this article;

4 (2) Are supported by nationally recognized engineering standards; and

5 (3) Are limited to actual wastewater output and system performance.

NOTE: The purpose of this bill relates to the regulatory classification of bars, taverns, and restaurants; commercial wastewater standards; and septic system oversight.

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