

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 659

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[Reported February 18, 2026, from the Committee on
Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §8-40-1, §8-40-2, and §8-40-3, relating to prohibiting municipalities from
3 prohibiting certain restrictions on the regulation of accessory dwelling units; defining terms;
4 prohibiting certain restrictions on accessory dwelling units; and providing exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. ACCESSORY DWELLING UNITS.

§8-40-1. Definitions.

1 As used in this article:

2 (a) "Accessory dwelling unit" means a self-contained and independently accessed living
3 unit on the same parcel as a single-family dwelling of greater square footage that includes its own
4 cooking, sleeping, and sanitation facilities and complies with, or is otherwise exempt from, any
5 applicable regulatory requirements;

6 (b) "By right" means the ability to be approved without requiring:

7 (1) A public hearing;

8 (2) A variance, conditional use permit, special permit, or special exception; or

9 (3) Other discretionary zoning action other than a determination that a site plan and any
10 construction plans conform with applicable regulatory requirements;

11 (c) "Gross floor area" means the interior habitable area of a single-family dwelling or an
12 accessory dwelling unit;

13 (d)(1) "Regulatory requirements" means the requirements determined by a municipality to
14 be necessary for approval of plans, permits, or applications under this section.

15 (2) "Regulatory requirements" includes:

16 (A) The West Virginia Fire Code as adopted by the State Fire Marshal;

17 (B) Any locally adopted ordinances and amendments to the ordinances;

18 (C) Applicable zoning ordinances and conditions;

19 (D) Design and construction standards, including any applicable building codes; and

20 (E) Other federal, state, and local laws, rules, and ordinances applicable to the plan,
21 permit, or application in question;

22 (e) "Short-term rental" means an individually or collectively owned single-family house or
23 single-family dwelling unit or a unit or group of units in a condominium, cooperative, time-share,
24 or owner-occupied residential home that is offered for a fee for 30 days or less; and

25 (f) "Single-family dwelling" means a building with one or more rooms designed for
26 residential living purposes by one household that is detached from any other dwelling unit.

§8-40-2. Prohibition on policy regulations restricting accessory dwelling units.

1 (a) Except as provided in this article, a municipality shall not adopt a policy, regulation, or
2 ordinance that restricts, prohibits, or otherwise regulates the use of at least one accessory
3 dwelling unit by right on a lot or parcel that contains a single-family dwelling.

4 (b) An accessory dwelling unit may be attached, detached, or internal to the single-family
5 dwelling on a lot or parcel.

6 (c) If the accessory dwelling unit is detached from or attached to the single-family dwelling,
7 it shall not be more than 75 percent of the gross floor area of the single-family dwelling or 1,000
8 square feet, whichever is less.

9 (d) A municipality may not:

10 (1) Require that a lot or parcel have additional parking to accommodate an accessory
11 dwelling unit or require fees in lieu of additional parking;

12 (2) Require that an accessory dwelling unit match the exterior design, roof pitch, or
13 finishing materials of the single-family dwelling: *Provided*, That a municipality may require an
14 accessory dwelling unit to match exterior design, roof pitch, finishing materials, and other design
15 guidelines if the single family dwelling or accessory dwelling unit is located within a historic district,
16 as defined in §8A-1-2 of this code, and the requirement is imposed pursuant to an ordinance or
17 regulation duly adopted for the preservation of that historic district;

18 (3) Require that the single-family dwelling or the accessory dwelling unit be occupied by
19 the owner;

20 (4) Require a familial, marital, or employment relationship between the occupants of the
21 single-family dwelling and the occupants of the accessory dwelling unit;

22 (5) Assess development impact fees in excess of \$250 on the construction of an accessory
23 dwelling unit;

24 (6) Require improvements to public streets or sidewalks as a condition of permitting an
25 accessory dwelling unit, except as necessary to reconstruct or repair a public street or sidewalk
26 that is disturbed as a result of the construction of the accessory dwelling unit;

27 (7) Set maximum building heights, minimum setback requirements, minimum lot sizes,
28 maximum lot coverages, or minimum building frontages for accessory dwelling units that are more
29 restrictive than those for the single-family dwelling on the lot;

30 (8) Impose more onerous development standards on an accessory dwelling unit beyond
31 those set forth in this article;

32 (9)(A) Require a restrictive covenant concerning an accessory dwelling unit on a parcel
33 zoned for residential use by a single-family dwelling.

34 (B)(i) Paragraph (A) of this subdivision does not prohibit restrictive covenants concerning
35 accessory dwelling units entered into between private parties.

36 (ii) Notwithstanding clause (i) of this paragraph, a municipality shall not condition a permit,
37 license, or use of an accessory dwelling unit on the adoption or implementation of a restrictive
38 covenant entered into between private parties; or

39 (10) Require water and sewer for the accessory dwelling unit separate from that serving
40 the primary structure.

§8-40-3. Exemptions.

1 (a) This article does not prohibit a municipality from regulating short-term rentals.

2 (b)(1)(A) A municipality may require a fee for reviewing applications to create accessory
3 dwelling units; and

4 (B) The application fee may not exceed \$250 for each accessory dwelling unit.

5 (2) Subdivision (1) of this subsection does not prohibit a municipality from requiring its
6 usual building fees in addition to the application fee.

7 (c) A policy, regulation, or ordinance in effect on or after January 1, 2027, that applies to
8 an accessory dwelling unit and does not comply with this article is invalid to the extent of its conflict
9 with this article.

10 (d) A municipality may require an accessory dwelling unit to have:

11 (1) A will-serve letter from both the water system and the sewer system that serves the
12 primary dwelling; or

13 (2) Approval from the Department of Health where municipal or private water service or
14 sewer service is not available.

15 (e) This article does not:

16 (1) Supersede applicable regulatory requirements; or

17 (2) Prohibit a municipality from adopting a policy, regulation, or ordinance that is more
18 permissive than the provisions under this article.