

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 991

By Senator Z. Maynard

[Introduced February 18, 2026; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §8-12-5 of the Code of West Virginia, 1931, as amended; and to
 2 amend the code by adding a new section, designated §55-7-33, relating to codifying the
 3 common law cause of action of public nuisance in a manner consistent with its originally
 4 intended and historical applications.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
 RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL
 OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by: (i) The Constitution of this state; (ii)
 2 other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not
 3 inconsistent or in conflict with any of the foregoing except special legislative charters, every
 4 municipality and the governing body thereof shall have plenary power and authority therein by
 5 ordinance or resolution, as the case may require, and by appropriate action based thereon:

6 (1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in
 7 good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks,
 8 drains and gutters, for the use of the public, and to improve and light the same, and have them kept
 9 free from obstructions on or over them which have not been authorized pursuant to the succeeding
 10 provisions of this subdivision; and, subject to such terms and conditions as the governing body
 11 shall prescribe, to permit, without in any way limiting the power and authority granted by the
 12 provisions of article sixteen of this chapter, any person to construct and maintain a passageway,
 13 building or other structure overhanging or crossing the airspace above a public street, avenue,
 14 road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and
 15 maintain a passageway, building or other structure overhanging or crossing any airspace is

16 granted, a public hearing thereon shall be held by the governing body after publication of a notice
17 of the date, time, place and purpose of the public hearing has been published as a Class I legal
18 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and
19 the publication area for the publication shall be the municipality: *Provided*, That any permit so
20 granted shall automatically cease and terminate in the event of abandonment and nonuse thereof
21 for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to
22 the municipality for its use and benefit;

23 (2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways,
24 sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions
25 under which any such opening may be made;

26 (3) To prevent by proper penalties the throwing, depositing or permitting to remain on any
27 street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails,
28 tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or
29 animals or the tires of vehicles;

30 (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and
31 public places belonging to the municipality, including the naming or renaming thereof, and to
32 consult with local postal authorities, the Division of Highways and the directors of county
33 emergency communications centers to assure uniform, nonduplicative addressing on a
34 permanent basis;

35 (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of
36 article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved,
37 repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants
38 thereof or of the real property next adjacent thereto;

39 (6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and
40 ferries and approaches thereto;

41 (7) To provide for the construction and maintenance of water drains, the drainage of

42 swamps or marshlands and drainage systems;

43 (8) To provide for the construction, maintenance and covering over of watercourses;

44 (9) To control and administer the waterfront and waterways of the municipality and to
45 acquire, establish, construct, operate and maintain and regulate flood control works, wharves and
46 public landings, warehouses and all adjuncts and facilities for navigation and commerce and the
47 utilization of the waterfront and waterways and adjacent property;

48 (10) To prohibit the accumulation and require the disposal of garbage, refuse, debris,
49 wastes, ashes, trash and other similar accumulations whether on private or public property:
50 *Provided*, That, in the event the municipality annexes an area which has been receiving solid
51 waste collection services from a certificated solid waste motor carrier, the municipality and the
52 solid waste motor carrier may negotiate an agreement for continuation of the private solid waste
53 motor carrier services for a period of time, not to exceed three years, during which time the
54 certificated solid waste motor carrier may continue to provide exclusive solid waste collection
55 services in the annexed territory;

56 (11) To construct, establish, acquire, equip, maintain and operate incinerator plants and
57 equipment and all other facilities for the efficient removal and destruction of garbage, refuse,
58 wastes, ashes, trash and other similar matters;

59 (12) To regulate or prohibit the purchase or sale of articles intended for human use or
60 consumption which are unfit for use or consumption, or which may be contaminated or otherwise
61 unsanitary;

62 (13) To prevent injury or annoyance to the public or individuals from anything dangerous,
63 offensive or unwholesome;

64 (14) To make regulations guarding against danger or damage by fire;

65 (15) To arrest, convict and punish any individual for carrying about his or her person any
66 revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or
67 any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect

68 to any firearm a municipality may only arrest, convict and punish someone if they are in violation of
69 a state law proscribing certain conduct with a firearm;

70 (16) To arrest, convict and punish any person for importing, printing, publishing, selling or
71 distributing any pornographic publications;

72 (17) To arrest, convict and punish any person for keeping a house of ill fame, or for letting
73 to another person any house or other building for the purpose of being used or kept as a house of
74 ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be
75 kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or
76 frequenting same;

77 (18) To prevent and suppress conduct and practices which are immoral, disorderly, lewd,
78 obscene and indecent;

79 (19) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

80 (20) To arrest, convict and punish any individual for driving or operating a motor vehicle
81 while intoxicated or under the influence of liquor, drugs or narcotics;

82 (21) To arrest, convict and punish any person for gambling or keeping any gaming tables,
83 commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under
84 any denomination, whether the gaming table be played with cards, dice or otherwise, or any
85 person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or
86 keeping or maintaining any gaming house or place, or betting or gambling for money or anything of
87 value;

88 ~~To provide for the elimination of hazards to public health and safety and to abate or~~
89 ~~cause to be abated anything which in the opinion of a majority of the governing body is a public~~
90 ~~nuisance~~ To provide for, in accordance with §55-7-32 of this code, unless otherwise set forth in this
91 code, the elimination of hazards to public health and safety and to enjoin or cause to be enjoined a
92 public nuisance;

93 (23) To license, or for good cause to refuse to license in a particular case, or in its

94 discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for
95 hire of pool and billiard tables notwithstanding the general law as to state licenses for any such
96 business and the provisions of section four, article thirteen of this chapter; and when the
97 municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard
98 room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly
99 appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the
100 event that the municipality determines to license any business, the municipality has plenary power
101 and authority and it shall be the duty of its governing body to make and enforce reasonable
102 ordinances regulating the licensing and operation of the businesses;

103 (24) To protect places of divine worship and to preserve peace and order in and about the
104 premises where held;

105 (25) To regulate or prohibit the keeping of animals or fowls and to provide for the
106 impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

107 (26) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly
108 beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of
109 necessary sustenance any domestic animal;

110 (27) To provide for the regular building of houses or other structures, for the making of
111 division fences by the owners of adjacent premises and for the drainage of lots by proper drains
112 and ditches;

113 (28) To provide for the protection and conservation of shade or ornamental trees, whether
114 on public or private property, and for the removal of trees or limbs of trees in a dangerous
115 condition;

116 (29) To prohibit with or without zoning the location of occupied house trailers or mobile
117 homes in certain residential areas;

118 (30) To regulate the location and placing of signs, billboards, posters and similar
119 advertising;

120 (31) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a
121 waterworks system, an electric system or sewer system and sewage treatment and disposal
122 system, or any combination of the foregoing (subject to all of the pertinent provisions of articles
123 nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of
124 eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of
125 the municipality, except that the municipality may not erect any system partly without the corporate
126 limits of the municipality to serve persons already obtaining service from an existing system of the
127 character proposed and where the system is by the municipality erected, or has heretofore been
128 so erected, partly within and partly without the corporate limits of the municipality, the municipality
129 has the right to lay and collect charges for service rendered to those served within and those
130 served without the corporate limits of the municipality and to prevent injury to the system or the
131 pollution of the water thereof and its maintenance in a healthful condition for public use within the
132 corporate limits of the municipality;

133 (32) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any
134 and all other property and appurtenances necessary, appropriate, useful, convenient or incidental
135 to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of
136 the pertinent provisions of articles nineteen and twenty of this chapter;

137 (33) To establish, construct, acquire, maintain and operate and regulate markets and
138 prescribe the time of holding the same;

139 (34) To regulate and provide for the weighing of articles sold or for sale;

140 (35) To establish, construct, acquire, maintain and operate public buildings, municipal
141 buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor
142 vehicle parking lots or any other public works;

143 (36) To establish, construct, acquire, provide, equip, maintain and operate recreational
144 parks, playgrounds and other recreational facilities for public use and in this connection also to
145 proceed in accordance with the provisions of article two, chapter ten of this code;

146 (37) To establish, construct, acquire, maintain and operate a public library or museum or
147 both for public use;

148 (38) To provide for the appointment and financial support of a library board in accordance
149 with the provisions of article one, chapter ten of this code;

150 (39) To establish and maintain a public health unit in accordance with the provisions of
151 section two, article two, chapter sixteen of this code, which unit shall exercise its powers and
152 perform its duties subject to the supervision and control of the West Virginia Board of Health and
153 State Bureau for Public Health;

154 (40) To establish, construct, acquire, maintain and operate hospitals, sanitarians and
155 dispensaries;

156 (41) To acquire, by purchase, condemnation or otherwise, land within or near the
157 corporate limits of the municipality for providing and maintaining proper places for the burial of the
158 dead and to maintain and operate the same and regulate interments therein upon terms and
159 conditions as to price and otherwise as may be determined by the governing body and, in order to
160 carry into effect the authority, the governing body may acquire any cemetery or cemeteries already
161 established;

162 (42) To exercise general police jurisdiction over any territory without the corporate limits
163 owned by the municipality or over which it has a right-of-way;

164 (43) To protect and promote the public morals, safety, health, welfare and good order;

165 (44) To adopt rules for the transaction of business and the government and regulation of
166 its governing body;

167 (45) Except as otherwise provided, to require and take bonds from any officers, when
168 considered necessary, payable to the municipality, in its corporate name, with such sureties and in
169 a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

170 (46) To require and take from the employees and contractors such bonds in a penalty, with
171 such sureties and with such conditions, as the governing body may see fit;

172 (47) To investigate and inquire into all matters of concern to the municipality or its
173 inhabitants;

174 (48) To establish, construct, require, maintain and operate such instrumentalities, other
175 than free public schools, for the instruction, enlightenment, improvement, entertainment,
176 recreation and welfare of the municipality's inhabitants as the governing body may consider
177 necessary or appropriate for the public interest;

178 (49) To create, maintain and operate a system for the enumeration, identification and
179 registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes
180 thereof as may be considered advisable;

181 (50) To require owners, residents or occupants of factory-built homes situated in a factory-
182 built rental home community with at least ten factory-built homes, to visibly post the specific
183 numeric portion of the address of each factory-built home on the immediate premises of the
184 factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the
185 event no numeric or other specific designation of an address exists for a factory-built home subject
186 to the authorization granted by this subdivision, the municipality has the authority to provide a
187 numeric or other specific designation of an address for the factory-built home and require that it be
188 posted in accordance with the authority otherwise granted by this section.

189 (51) To appropriate and expend not exceeding twenty-five cents per capita per annum for
190 advertising the municipality and the entertainment of visitors;

191 (52) To conduct programs to improve community relations and public relations generally
192 and to expend municipal revenue for such purposes;

193 (53) To reimburse applicants for employment by the municipality for travel and other
194 reasonable and necessary expenses actually incurred by the applicants in traveling to and from
195 the municipality to be interviewed;

196 (54) To provide revenue for the municipality and appropriate the same to its expenses;

197 (55) To create and maintain an employee benefits fund which may not exceed one tenth of

198 one percent of the annual payroll budget for general employee benefits and which is set up for the
199 purpose of stimulating and encouraging employees to develop and implement cost-saving ideas
200 and programs and to expend moneys from the fund for these purposes;

201 (56) To enter into reciprocal agreements with governmental subdivisions or agencies of
202 any state sharing a common border for the protection of people and property from fire and for
203 emergency medical services and for the reciprocal use of equipment and personnel for these
204 purposes;

205 (57) To provide penalties for the offenses and violations of law mentioned in this section,
206 subject to the provisions of section one, article eleven of this chapter, and such penalties may not
207 exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses
208 and violations;

209 (58) To participate in a purchasing card program for local governments authorized and
210 administered by the State Auditor as an alternative payment method; and

211 (59) To enter into agreements with one or more other municipalities, and with county
212 commissions to combine and share selected governmental services by combining operations,
213 equipment, and employees into a unified government service.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-33. Limitations on actions related to public nuisances.

1 (a) Preemption. - This chapter abrogates the common law of public nuisance in this state to
2 the extent the common law is inconsistent with this chapter.

3 (b) Definitions. - Unless otherwise set forth in this code,

4 (1) "Government entity" means the state, an agency or a political subdivision of the state, a
5 federal entity or agency, or any other governing authority, including a tribal government.

6 (2) "Public nuisance" means:

7 (A) A condition arising out of the use of real property that unlawfully interferes with a public
8 right by endangering communal safety, being indecent to the community, or being offensive to the
9 community; or

10 (B) A condition that unlawfully interferes with the public right to free passage or use, in the
11 customary manner, of public land, air, or water.

12 (3) "Public right" means a right, commonly held by all members of the public, to the use of
13 public land, air, or water.

14 (4) "Unlawful interference" means actions or conditions that violate a statute, ordinance,
15 regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or
16 approved by a government entity.

17 (c) Exclusions from definition of public nuisance. – The following nonexclusive list of
18 actions or conditions may not be considered a public nuisance or be the basis for a public
19 nuisance cause of action:

20 (1) An action or condition that is lawful;

21 (2) An action or condition that is authorized, approved, licensed, or mandated by statute,
22 ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted,
23 promulgated, or approved by a government entity;

24 (3) Impairment of the spiritual, cultural, or emotional significance associated with public
25 land, air, or water;

26 (4) The design, manufacturing, distributing, selling, labeling, advertising, or marketing of a
27 product; or

28 (5) The aggregation of individual injuries or private rights, including private nuisances.

29 (d) Liability for a public nuisance. – A person may be subject to a public nuisance cause of
30 action only if that person proximately caused the public nuisance at the time the public nuisance
31 was created, which includes controlling the condition, or instructing another person to engage in
32 the activity, that unlawfully interferes with a public right.

33 (e) Standing for government entities. -

34 (1) A public nuisance cause of action is available to a government entity only if the public
35 nuisance is physically within the jurisdiction of that government entity. Past, current, or future
36 expenditures made by a government entity related to injunction of or any other response to a
37 public nuisance do not themselves confer standing to file or maintain a public nuisance action.

38 (2) In a public nuisance action brought by a government entity, the only remedies against a
39 public nuisance are:

40 (A) Indictment or information as regulated by Chapters 61 and 62.

41 (B) Injunctive relief to enjoin an unlawful condition that is proximately causing a public
42 nuisance; and

43 (C) Monetary and nonmonetary resources, if quantifiable, that a court determines are
44 reasonably necessary to abate the public nuisance based on relevant and reliable cost factors and
45 established by clear and convincing evidence. All resources provided under subsection (2) must
46 be spent to abate the public nuisance itself.

47 (3) Remedies available under this section may not include:

48 (A) The costs of abating a potential future public nuisance; or

49 (B) Damages of any kind, including economic, noneconomic, and exemplary damages.

50 (4) Nothing in this chapter limits the authority of a government entity to order any person to
51 vacate the right-of-way of any public land, air, or water of this state.

52 (f) Standing for private citizens. -

53 (1) A public nuisance cause of action is available to a private person only if that person has
54 sustained a special injury proximately caused by the public nuisance and only if the person can
55 show the existence of the special injury by clear and convincing evidence.

56 (2) A special injury is an injury that is different in kind, not just in degree, from an injury
57 sustained by the general public exercising the same public right. A special injury is not one based
58 upon impairment of the spiritual, cultural, or emotional significance associated with public land, air,

59 or water of this state.

60 (3) Financial expenditures made by a private person related to an injunction of, or any
61 other response to, a public nuisance does not constitute a special injury sufficient to confer
62 standing on the person to file or maintain a public nuisance action.

63 (4) The remedy available to a private person in a public nuisance action is limited solely to
64 compensatory damages for the special injury.

65 (5) The abatement of a public nuisance does not preclude the right of a person to recover
66 compensatory damages under this section.

67 (6) Private persons may not bring a class action for special injuries arising out of a public
68 nuisance.

69 (g) Affirmative defense. - Unless otherwise set forth in this code, it is an affirmative defense
70 to any claim under this section that defendant does not have actual control over the source of the
71 alleged public nuisance.

72 (h) Prospective effect. - The provisions set forth in this Article shall apply only to a cause of
73 action that accrues on or after the date that this amendment becomes effective. A cause of action
74 that accrued prior to this Act becoming effective is governed by the law applicable at the time of
75 accrual of the cause of action, and that law is continued in effect for that purpose.

NOTE: The purpose of this bill is to codify the common law cause of action of public nuisance in a manner consistent with its originally intended and historical applications.

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