

# 4180

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



# ENROLLED

*Com. Sub. for*  
**HOUSE BILL No. 4180**

(By ~~ME~~ *Delegate Leary*)



Passed *March 11* 1988

In Effect *Ninety Days from* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4180**  
(By DELEGATE LEARY)

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[Passed March 11, 1988; in effect ninety days from passage.]

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AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article twelve, chapter sixty-one of said code, all relating to authorizing the director of health to promulgate a program for sudden infant death syndrome, and providing medical examiners with stringent guidelines to follow in sudden infant death syndrome cases.

*Be it enacted by the Legislature of West Virginia:*

That section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section ten, article twelve, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 1. STATE DEPARTMENT OF HEALTH.**

**§16-1-10. Powers and duties of the director of health.**

1       The director shall be the chief executive, administra-  
2       tive and fiscal officer of the department of health and  
3       shall have the following powers and duties:

4       (1) To supervise and control the business, fiscal,  
5       administrative and health affairs of the department of

6 health, and in that regard and in accordance with law,  
7 employ, fix the compensation of, and discharge all  
8 persons necessary for the proper execution of the laws  
9 of this state relating to health and mental health, and  
10 the efficient and proper discharge of the duties imposed  
11 upon, and execution of powers vested in the director by  
12 law; to that end the director may promulgate such  
13 written rules as are necessary and proper to delegate  
14 functions, establish divisions, specify duties and respon-  
15 sibilities, prescribe qualifications of division directors  
16 and otherwise administer or supervise the department,  
17 subject to the safeguards of the state civil service system  
18 as it now exists;

19 (2) To enforce all laws of this state concerning public  
20 health, health and mental health; to that end, the  
21 director shall make, or cause to be made, sanitary  
22 investigations and inquiries respecting the cause of  
23 disease, especially of epidemics and endemic conditions,  
24 and the means of prevention, suppression or control of  
25 such conditions; the source of sickness and mortality,  
26 and the effects of environment, employment, habits and  
27 circumstances of life on the public health. The director  
28 shall further make, or cause to be made, inspections and  
29 examinations of food, drink and drugs offered for sale  
30 or public consumption in such manner as he shall deem  
31 necessary to protect the public health and shall report  
32 all violations of laws and regulations relating thereto to  
33 the prosecuting attorney of the county in which such  
34 violations occur;

35 (3) To make complaint or cause proceedings to be  
36 instituted against any person, corporation or other entity  
37 for the violation of any health law before any court or  
38 agency, without being required to give security for costs;  
39 such action may be taken without the sanction of the  
40 prosecuting attorney of the county in which the proceed-  
41 ings are instituted or to which the proceedings relate;

42 (4) To supervise and coordinate the administration  
43 and operation of the state hospitals named in article two,  
44 chapter twenty-seven of this code, and any other state  
45 facility hereafter created for the mentally ill, mentally  
46 retarded or addicted;

47 (5) To supervise and coordinate the administration  
48 and operation of the health and other facilities named  
49 in chapter twenty-six of this code, except as otherwise  
50 therein provided, and any other state facility hereafter  
51 created relating to health, not otherwise provided for;

52 (6) To supervise and coordinate the administration  
53 and operation of the county and municipal boards of  
54 health and health officers;

55 (7) To develop and maintain a state plan of operation  
56 which sets forth the needs of the state in the areas of  
57 health and mental health; goals and objectives for  
58 meeting those needs; methods for achieving the stated  
59 goals and objectives; and needed personnel, funds and  
60 authority for achieving the goals and objectives;

61 (8) To collect data as may be required to foster  
62 knowledge on the citizenry's health status, the health  
63 system and costs of health care;

64 (9) To delegate to any appointee, assistant or employee  
65 any and all powers and duties vested in the director,  
66 including, but not limited to, the power to execute  
67 contracts and agreements in the name of the depart-  
68 ment: *Provided*, That the director shall be responsible  
69 for the acts of such appointees, assistants and employees;

70 (10) To transfer any patient or resident between  
71 hospitals and facilities under the control of the director  
72 and, by agreement with the state commissioner of public  
73 institutions or his successor and otherwise in accord  
74 with law, accept a transfer of a resident of a facility  
75 under the jurisdiction of the state commissioner of  
76 public institutions or his successor;

77 (11) To make periodic reports to the governor and to  
78 the Legislature relative to specific subject areas of  
79 public health or mental health, the state facilities under  
80 the supervision of the director, or other matters  
81 affecting the health or mental health of the people of the  
82 state;

83 (12) To accept and use for the benefit of the state, for  
84 the benefit of the health of the people of this state, any  
85 gift or devise of any property or thing which is lawfully

86 given: *Provided*, That if any gift is for a specific purpose  
87 or for a particular state hospital or facility, it shall be  
88 used as specified. Any profit which may arise from any  
89 such gift or devise of any property or thing shall be  
90 deposited in a special revenue fund with the state  
91 treasurer and shall be used only as specified by the  
92 donor or donors;

93 (13) To acquire by condemnation or otherwise any  
94 interest, right, privilege, land or improvement and hold  
95 title thereto, for the use or benefit of the state or a state  
96 hospital or facility, and, by and with the consent of the  
97 governor, to sell, exchange or otherwise convey any  
98 interest, right, privilege, land or improvement acquired  
99 or held by the state, state hospital or state facility; which  
100 condemnation proceedings shall be conducted pursuant  
101 to chapter fifty-four of this code;

102 (14) To inspect and enforce rules and regulations to  
103 control the sanitary conditions of and license all  
104 institutions and health care facilities as set forth in this  
105 chapter, including, but not limited to, schools, whether  
106 public or private, public conveyances, dairies, slaughter-  
107 houses, workshops, factories, labor camps, places of  
108 entertainment, hotels, motels, tourist camps, all other  
109 places open to the general public and inviting public  
110 patronage or public assembly, or tendering to the public  
111 any item for human consumption and places where  
112 trades or industries are conducted;

113 (15) To make inspections, conduct hearings, and to  
114 enforce the rules and regulations of the board concern-  
115 ing occupational and industrial health hazards, the  
116 sanitary condition of streams, sources of water supply,  
117 sewerage facilities, and plumbing systems, and the  
118 qualifications of personnel connected with such supplies,  
119 facilities or systems without regard to whether they are  
120 publicly or privately owned; and to make inspections,  
121 conduct hearings and enforce the rules and regulations  
122 of the board concerning the design of chlorination and  
123 filtration facilities and swimming pools;

124 (16) To reorganize the functions and divisions of the  
125 department of health, structuring all functions pre-

126 viously assigned to the board of health, department of  
127 health, department of mental health, and otherwise  
128 assigned to the department of health by this chapter, to  
129 the end of establishing the most efficient and economic  
130 delivery of health services in accord with the purposes  
131 of this chapter; to achieve such goal the director shall  
132 establish such divisions, and delegate and assign such  
133 responsibilities and functions as he deems necessary to  
134 accomplish such reorganization. On or before the first  
135 day of February, one thousand nine hundred seventy-  
136 eight, the director shall submit to the Legislature a  
137 report on the reorganization of such department and the  
138 effect thereof, including, but not limited to, the cost, the  
139 administrative results and the effect on the delivery of  
140 health services;

141 (17) To direct and supervise the provision of dental  
142 services in all state institutions;

143 (18) To provide for, except as otherwise specified  
144 herein, a comprehensive system of community mental  
145 health and mental retardation supportive services to the  
146 end of preventing the unnecessary institutionalization of  
147 persons and promoting the community placement of  
148 persons presently residing in mental health and mental  
149 retardation facilities and other institutions and for the  
150 planning of the provisions of comprehensive mental  
151 health and mental retardation services throughout the  
152 state;

153 (19) To provide in accordance with this subdivision  
154 and the definitions and other provisions of article one-  
155 a, chapter twenty-seven of the code, for a comprehensive  
156 program for the care, treatment and rehabilitation of  
157 alcoholics and drug abusers; for research into the cause  
158 and prevention of alcoholism and drug abuse; for the  
159 training and employment of personnel to provide the  
160 requisite rehabilitation of alcoholics and drug abusers;  
161 and for the education of the public concerning alcoho-  
162 lism and drug abuse; and

163 (20) To provide in accordance with this subsection for  
164 a program for the care, treatment and rehabilitation of  
165 the parents of sudden infant death syndrome victims; for

166 the training and employment of personnel to provide the  
167 requisite rehabilitation of parents of sudden infant  
168 death syndrome victims; for the education of the public  
169 concerning sudden infant death syndrome; for the  
170 responsibility of reporting to the Legislature on a  
171 quarterly basis the incidence of sudden infant death  
172 syndrome cases occurring in West Virginia; for the  
173 education of police, employees and volunteers of all  
174 emergency services concerning sudden infant death  
175 syndrome; for the state sudden infant death syndrome  
176 advisory council to develop regional family support  
177 groups to provide peer support to families of sudden  
178 infant death syndrome victims; and for requesting  
179 appropriation of funds in both federal and state budgets  
180 to fund the sudden infant death syndrome program; and

181 (21) To exercise all other powers delegated to the  
182 department by this chapter or otherwise in this code, to  
183 enforce all health laws and the rules and regulations  
184 promulgated by the board, and to pursue all other  
185 activities necessary and incident to the authority and  
186 area of concern entrusted to the department or director.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 12. POSTMORTEM EXAMINATIONS.

#### **§61-12-10. When autopsies made and by whom performed; reports; records of deaths investigated; copies of records and information.**

1 If in the opinion of the chief medical examiner, or of  
2 the medical examiner of the county in which the death  
3 in question occurred, it is advisable and in the public  
4 interest that an autopsy be made, or if an autopsy be  
5 requested by either the prosecuting attorney or the  
6 judge of the circuit court or other court of record having  
7 criminal jurisdiction in such county, such autopsy shall  
8 be made by the chief medical examiner, by a member  
9 of his staff, or by such competent pathologist as the chief  
10 medical examiner shall designate and employ pursuant  
11 to the provisions of this article. The chief medical  
12 examiner may employ any medical examiner who is a  
13 qualified pathologist to make such autopsies, and the

14 fees to be paid hereunder for autopsies hereunder shall  
15 be in addition to the fee provided for investigations and  
16 made pursuant to section eight of this article. A full  
17 record and report of the findings developed by the  
18 autopsy shall be filed with the office of medical  
19 examinations by such person making the autopsy.

20 Within the discretion of the chief medical examiner,  
21 or of the person making such autopsy, or if requested  
22 by the prosecuting attorney of such county, or of the  
23 county where any injury contributing to or causing the  
24 death was sustained, a copy of such report of the autopsy  
25 shall be furnished such prosecuting attorney.

26 The office of medical examinations shall keep full,  
27 complete, and properly indexed records of all deaths  
28 investigated, containing all relevant information con-  
29 cerning the death, and the autopsy report if such be  
30 made. Any prosecuting attorney or law-enforcement  
31 officer may secure copies of such records or information  
32 necessary to him for the performance of his official  
33 duties. Copies of such records or information shall be  
34 furnished, upon request, to any party to whom the cause  
35 of death is a material issue. Any person performing an  
36 autopsy pursuant to the authority of this section shall  
37 be empowered to keep and retain, for and on behalf of  
38 the chief medical examiner, any tissue from the body  
39 upon which the autopsy was performed which may be  
40 necessary for further study or consideration.

41 In cases of the death of any infant in the state of West  
42 Virginia where sudden infant death syndrome is the  
43 suspected cause of death and the chief medical examiner  
44 or the medical examiner of the county in which the  
45 death in question occurred considers it advisable to  
46 perform an autopsy, it is the duty of the chief medical  
47 examiner or the medical examiner of the county in  
48 which the death occurred to notify at least one parent  
49 or legal guardian in written form of the purpose for the  
50 autopsy examination and to provide to the parents or  
51 legal guardian(s) a report of the findings of the autopsy  
52 examination within thirty days of completion of such  
53 examination.

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Bruce O. Williams*  
-----  
Chairman Senate Committee

*Bernard V. Kelly*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Jack C. Hells*  
-----  
Clerk of the Senate

*Donald G. Kopp*  
-----  
Clerk of the House of Delegates

*Don Touhy*  
-----  
President of the Senate

*[Signature]*  
-----  
Speaker of the House of Delegates

The within *approved* this the *28th*  
*March*  
day of \_\_\_\_\_, 1988.

*A. S. Parris*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:05 a.m.

RECEIVED

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OFFICE OF WEST VIRGINIA  
SECRETARIAT OF STATE