

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4344

(By Mr. Speaker, Mr. Chambers)  
[By request of the Executive]



Passed Feb. 28, 1990

In Effect From Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4344**

(By MR. SPEAKER, MR. CHAMBERS)  
[By Request of the Executive]

[Passed February 28, 1990; in effect from passage.]

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, relating to powers and duties of the director of health and providing the director, upon gubernatorial approval, the power to close, sell, lease or contract out the operation of specified health care facilities; providing for a report to the joint committee on government and finance relative to patient transfers; requiring public hearings under specified conditions; providing certain employment preferences in state agencies for specified employees; and requiring an annual report to the Legislature.

*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 to read as follows:

**ARTICLE 1. STATE DIVISION 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 division of health and shall

3 have the following powers and duties:

4 (1) To supervise and control the business, fiscal,  
5 administrative and health affairs of the division 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 subdivisions, specify duties and  
15 responsibilities, prescribe qualifications of subdivision  
16 directors and otherwise administer or supervise the  
17 division, subject to the safeguards of the state civil  
18 service system 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 the director  
31 shall deem necessary to protect the public health and  
32 shall report all violations of laws and regulations  
33 relating thereto to the prosecuting attorney of the county  
34 in which such 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: *Provided*, That notwithstanding  
47 any other provisions of this code, in the interest of  
48 promoting cost effective health care in government, the  
49 director, with the approval of the secretary of the  
50 department of health and human resources and the  
51 governor, has the power to close, sell or lease or  
52 otherwise transfer the Greenbrier School for Retarded  
53 Children or Spencer State Hospital, or to arrange for  
54 the administration and operation of said facility by  
55 contract or other means: *Provided, however*, That  
56 savings realized pursuant to the closure, sale or lease of  
57 the facility or the contracting out of the operation of the  
58 facility shall remain in the "Hospital Services Revenue  
59 Account": *Provided further*, That prior to any transfer  
60 of patients as a result of any closure, sale, lease,  
61 contracting out of the operations, or other transfer made  
62 pursuant to this subdivision, a comprehensive plan  
63 detailing specifically which hospitals are to be closed,  
64 sold, leased or managed under contract in whole or in  
65 part; an analysis of the impact such action will have on  
66 other state facilities, their patients and their staff; a  
67 detailed plan for the care, placement and movement of  
68 patients including offering relocation counseling; a plan  
69 to assist affected employees in finding other employ-  
70 ment, including retraining and education and relocation  
71 counseling; an economic and community impact state-  
72 ment detailing savings and costs associated with the  
73 proposed closing, sale, lease or management of such  
74 state facilities, and the effect on local and state  
75 employment, revenues and services, shall be submitted  
76 to the joint committee on government and finance: *And*  
77 *provided further*, That prior to any closure, sale, lease,  
78 contracting out of the operations, or other transfer, the  
79 joint committee on government and finance shall  
80 conduct a public hearing on the proposal in the affected  
81 area of the state. Any person to whom such facility is  
82 sold, leased, or otherwise transferred or by contract or  
83 other means administers and operates such facility or  
84 who operates such facility as an intermediate care

85 facility for the mentally retarded shall operate such  
86 facility in accordance with applicable federal laws and  
87 regulations and with chapter twenty-seven of this code  
88 and shall use best efforts to employ qualified persons  
89 who were employed at the facility by the state immediately  
90 prior to such transfer or contract: *And provided*  
91 *further*, That, notwithstanding any other provision of the  
92 code to the contrary, in filling vacancies at other  
93 facilities or state agencies the director and other  
94 directors of state agencies shall, for a period of twenty-  
95 four months after such transfer or contract, give  
96 preference, over all but existing employees in such other  
97 facilities named in article two, chapter twenty-seven and  
98 article five-c, chapter sixteen of this code, to qualified  
99 persons who were permanently employed at the facility  
100 immediately prior to such transfer or contract: *And*  
101 *provided further*, That qualified persons who were  
102 permanently employed at the facility immediately prior  
103 to such transfer or contract shall not supersede those  
104 employees with recall rights in other state agencies: *And*  
105 *provided further*, That preferential consideration be  
106 given to West Virginia businesses or corporations  
107 headquartered in West Virginia, whenever possible, for  
108 the purchase, lease or other transfer of a facility under  
109 the provisions of this subsection;

110 (5) To supervise and coordinate the administration  
111 and operation of the health and other facilities named  
112 in chapter twenty-six of this code, except as otherwise  
113 therein provided, and any other state facility hereafter  
114 created relating to health, not otherwise provided for:  
115 *Provided*, That notwithstanding any other provisions of  
116 this code, in the interest of promoting cost effective  
117 health care in government, the director, with the  
118 approval of the secretary of the department of health  
119 and human resources and the governor, has the power  
120 to close, sell or lease or otherwise transfer Andrew S.  
121 Rowan Memorial Home and the Denmark State Hospital,  
122 or to arrange for the administration and operation of  
123 such facilities by contract or other means: *Provided*,  
124 *however*, That savings realized pursuant to the closure,  
125 sale or lease of any facility or the contracting out of the  
126 operation of any facility shall remain in the "Hospital

127 Services Revenue Account”: *Provided further*, That prior  
128 to any transfer of patients as a result of any closure, sale,  
129 lease, contracting out of the operations, or other transfer  
130 made pursuant to this subdivision, a comprehensive plan  
131 detailing specifically which hospitals are to be closed,  
132 sold, leased or managed under contract in whole or in  
133 part; an analysis of the impact such action will have on  
134 other state facilities, their patients and their staff; a  
135 detailed plan for the care, placement and movement of  
136 patients including offering relocation counseling; a plan  
137 to assist affected employees in finding other employ-  
138 ment, including retraining and education and relocation  
139 counseling; an economic and community impact state-  
140 ment detailing savings and costs associated with the  
141 proposed closing, sale, lease or management of such  
142 state facilities, and the effect on local and state  
143 employment, revenues and services, shall be submitted  
144 to the joint committee on government and finance: *And*  
145 *provided further*, That prior to any closure, sale, lease,  
146 contracting out of the operations, or other transfer, the  
147 joint committee on government and finance shall  
148 conduct a public hearing on the proposal in the affected  
149 area of the state. Any person to whom such facility is  
150 sold, leased, or otherwise transferred, or by contract or  
151 other means administers and operates such facility or  
152 who operates such facility as a personal care home or  
153 nursing home for the mentally retarded, shall operate  
154 such facility in accordance with applicable federal laws  
155 and regulations and with chapter twenty-seven or  
156 article five-c, chapter sixteen of this code and shall use  
157 best efforts to employ qualified persons who were  
158 employed at the facility by the state immediately prior  
159 to such transfer or contract: *And provided further*, That,  
160 notwithstanding any other provision of the code to the  
161 contrary, in filling vacancies at other facilities or other  
162 state agencies the director and the directors of other  
163 state agencies shall, for a period of twenty-four months  
164 after such transfer or contract, give preference, over all  
165 but existing employees in such other facilities named in  
166 article two, chapter twenty-seven and article five-c,  
167 chapter sixteen of this code, to qualified persons who  
168 were permanently employed at the facility immediately

169 prior to such transfer or contract: *And provided further,*  
170 That qualified persons who were permanently employed  
171 at the facility immediately prior to such transfer or  
172 contract shall not supersede those employees with recall  
173 rights in other state agencies: *And provided further,*  
174 That preferential consideration be given to West  
175 Virginia businesses or corporations headquartered in  
176 West Virginia, whenever possible, for the purchase,  
177 lease or other transfer of a facility under the provisions  
178 of this subsection;

179 (6) To supervise and coordinate the administration  
180 and operation of the county and municipal boards of  
181 health and health officers;

182 (7) To develop and maintain a state plan of operation  
183 which sets forth the needs of the state in the areas of  
184 health and mental health; goals and objectives for  
185 meeting those needs; methods for achieving the stated  
186 goals and objectives; and needed personnel, funds and  
187 authority for achieving the goals and objectives;

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

191 (9) To delegate to any appointee, assistant or employee  
192 any and all powers and duties vested in the director,  
193 including, but not limited to, the power to execute  
194 contracts and agreements in the name of the division:  
195 *Provided,* That the director shall be responsible for the  
196 acts of such appointees, assistants and employees;

197 (10) To transfer, notwithstanding other provisions of  
198 this code, any patient or resident between hospitals and  
199 facilities under the control of the director and, by  
200 agreement with the state commissioner of corrections or  
201 successor thereto and otherwise in accord with law,  
202 accept a transfer of a resident of a facility under the  
203 jurisdiction of the state commissioner of corrections or  
204 successor thereto;

205 (11) To make periodic reports to the governor and to  
206 the Legislature relative to specific subject areas of  
207 public health or mental health, the state facilities under

208 the supervision of the director, or other matters  
209 affecting the health or mental health of the people of the  
210 state;

211 (12) To accept and use for the benefit of the state, for  
212 the benefit of the health of the people of this state, any  
213 gift or devise of any property or thing which is lawfully  
214 given: *Provided*, That if any gift is for a specific purpose  
215 or for a particular state hospital or facility, it shall be  
216 used as specified. Any profit which may arise from any  
217 such gift or devise of any property or thing shall be  
218 deposited in a special revenue fund with the state  
219 treasurer and shall be used only as specified by the  
220 donor or donors;

221 (13) To acquire by condemnation or otherwise any  
222 interest, right, privilege, land or improvement and hold  
223 title thereto, for the use or benefit of the state or a state  
224 hospital or facility, and, by and with the consent of the  
225 governor, to sell, exchange or otherwise convey any  
226 interest, right, privilege, land or improvement acquired  
227 or held by the state, state hospital or state facility and  
228 deposit the proceeds from such sale, exchange or other  
229 conveyance into the hospital services revenue account.  
230 Any condemnation proceedings shall be conducted  
231 pursuant to chapter fifty-four of this code;

232 (14) To inspect and enforce rules and regulations to  
233 control the sanitary conditions of and license all  
234 institutions and health care facilities as set forth in this  
235 chapter, including, but not limited to, schools, whether  
236 public or private, public conveyances, dairies, slaughter-  
237 houses, workshops, factories, labor camps, places of  
238 entertainment, hotels, motels, tourist camps, all other  
239 places open to the general public and inviting public  
240 patronage or public assembly, or tendering to the public  
241 any item for human consumption and places where  
242 trades or industries are conducted;

243 (15) To make inspections, conduct hearings, and to  
244 enforce the rules and regulations of the board concern-  
245 ing occupational and industrial health hazards, the  
246 sanitary condition of streams, sources of water supply,  
247 sewerage facilities, and plumbing systems, and the



248 qualifications of personnel connected with such supplies,  
249 facilities or systems without regard to whether they are  
250 publicly or privately owned; and to make inspections,  
251 conduct hearings and enforce the rules and regulations  
252 of the board concerning the design of chlorination and  
253 filtration facilities and swimming pools;

254 (16) To reorganize the functions and subdivisions of  
255 the division of health, structuring all functions pre-  
256 viously assigned to the board of health, department of  
257 health, department of mental health, and otherwise  
258 assigned to the division of health by this chapter, to the  
259 end of establishing the most efficient and economic  
260 delivery of health services in accord with the purposes  
261 of this chapter; to achieve such goal the director shall  
262 establish such subdivisions, and delegate and assign  
263 such responsibilities and functions as he deems neces-  
264 sary to accomplish such reorganization;

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

267 (18) To provide for, except as otherwise specified  
268 herein, a comprehensive system of community mental  
269 health and mental retardation supportive services to the  
270 end of preventing the unnecessary institutionalization of  
271 persons and promoting the community placement of  
272 persons presently residing in mental health and mental  
273 retardation facilities and other institutions and for the  
274 planning of the provisions of comprehensive mental  
275 health and mental retardation services throughout the  
276 state;

277 (19) To provide in accordance with this subdivision  
278 and the definitions and other provisions of article one-  
279 a, chapter twenty-seven of the code, for a comprehensive  
280 program for the care, treatment and rehabilitation of  
281 alcoholics and drug abusers; for research into the cause  
282 and prevention of alcoholism and drug abuse; for the  
283 training and employment of personnel to provide the  
284 requisite rehabilitation of alcoholics and drug abusers;  
285 and for the education of the public concerning alcoho-  
286 lism and drug abuse;

287 (20) To provide in accordance with this subdivision

288 for a program for the care, treatment and rehabilitation  
289 of the parents of sudden infant death syndrome victims;  
290 for the training and employment of personnel to provide  
291 the requisite rehabilitation of parents of sudden infant  
292 death syndrome victims; for the education of the public  
293 concerning sudden infant death syndrome; for the  
294 responsibility of reporting to the Legislature on a  
295 quarterly basis the incidence of sudden infant death  
296 syndrome cases occurring in West Virginia; for the  
297 education of police, employees and volunteers of all  
298 emergency services concerning sudden infant death  
299 syndrome; for the state sudden infant death syndrome  
300 advisory council to develop regional family support  
301 groups to provide peer support to families of sudden  
302 infant death syndrome victims; and for requesting  
303 appropriation of funds in both federal and state budgets  
304 to fund the sudden infant death syndrome program;

305 (21) To exercise all other powers delegated to the  
306 division by this chapter or otherwise in this code, to  
307 enforce all health laws and the rules and regulations  
308 promulgated by the board, and to pursue all other  
309 activities necessary and incident to the authority and  
310 area of concern entrusted to the division or director; and

311 (22) To provide to the Legislature, after approval by  
312 the secretary of the department of health and human  
313 resources, a report on the long term plans for state  
314 hospitals named in article two, chapter twenty-seven of  
315 this code and the health facilities named in chapter  
316 twenty-six of this code on or before the fifteenth day of  
317 January, one thousand nine hundred ninety-one, and  
318 annually updated thereafter.

Enr. Com. Sub. for H. B. 4344] 10

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

*Frederic L. Perce*  
Chairman Senate Committee

*Bernard V. Kelly*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Harrell Edelman*  
Clerk of the Senate

*Donald L. Hoop*  
Clerk of the House of Delegates

*Neil Bennett*  
President of the Senate

*W. W. [Signature]*  
Speaker of the House of Delegates

The within *is approved* this the *13<sup>th</sup>*  
day of *March* 1990.  
*W. W. [Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/90

Time 2:36 PM

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1530 MAR 13 PM 4:32

OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE