

SB 542

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

Committee Substitute for
SENATE BILL NO. 542

(By Senator Walker, et al)



PASSED March 11, 2000
In Effect ninety days from Passage

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SENATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 542

(SENATORS WALKER, PREZIOSO, KESSLER, PLYMALE,
MCCABE, SNYDER, MINEAR, CHAFIN, LOVE, BALL, DAWSON,
MITCHELL, BOWMAN, JACKSON, UNGER, EDGELL, SHARPE, ROSS,
REDD, ANDERSON AND DITTMAR, *original sponsors*)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to repeal article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles one and two of said chapter, all relating to the state public health system and local boards of health and their purposes; definitions; powers and duties of the secretary; rules; state health officer; powers and duties of the commissioner; disposition of fees collected by the commissioner; receipt and disbursement of federal aid; employee training; investigations and hearings; authority to create municipal, county and combined boards of health; appointment to and composition of local boards of

health; terms of appointment, compensation and expenses of members of local boards of health; meetings, quorum, bylaws and powers and duties of local boards of health; local health officer appointment, qualifications and power and duties; financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding; penalties; and severability.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles one and two of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-1. Purpose.

1 It is the policy of this state to promote the physical and
2 mental health of all of its citizens and to prevent disease,
3 injury, and disability whenever possible. The state
4 recognizes its responsibility to assist in the provision of
5 essential public health services and establishes by this
6 article a state public health system to work in conjunction
7 with local boards of health to provide basic public health
8 services that encourage healthy people in healthy commu-
9 nities.

§16-1-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Basic public health services" means those services
4 that are necessary to protect the health of the public. The
5 three areas of basic public health services are communica-
6 ble and reportable disease prevention and control, commu-

7 nity health promotion and environmental health protection;

8 (b) "Bureau" means the bureau for public health in the
9 department of health and human resources;

10 (c) "Combined local board of health" is one form of
11 organization for a local board of health and means a board
12 of health serving any two or more counties or any county
13 or counties and one or more municipalities within or
14 partially within the county or counties;

15 (d) "Commissioner" means the commissioner of the
16 bureau for public health, who is the state health officer;

17 (e) "County board of health" is one form of organization
18 for a local board of health and means a local board of
19 health serving a single county;

20 (f) "Department" means the West Virginia department
21 of health and human resources;

22 (g) "Director" or "director of health" means the state
23 health officer. Administratively within the department,
24 the bureau for public health through its commissioner
25 carries out the public health functions of the department,
26 unless otherwise assigned by the secretary;

27 (h) "Essential public health services" means the core
28 public health activities necessary to promote health and
29 prevent disease, injury and disability for the citizens of the
30 state. The services include:

31 (1) Monitoring health status to identify community
32 health problems;

33 (2) Diagnosing and investigating health problems and
34 health hazards in the community;

35 (3) Informing, educating and empowering people about
36 health issues;

37 (4) Mobilizing community partnerships to identify and
38 solve health problems;

39 (5) Developing policies and plans that support individual
40 and community health efforts;

41 (6) Enforcing laws and rules that protect health and
42 ensure safety;

43 (7) Uniting people with needed personal health services
44 and assuring the provision of health care when it is
45 otherwise not available;

46 (8) Promoting a competent public health and personal
47 health care workforce;

48 (9) Evaluating the effectiveness, accessibility and quality
49 of personal and population-based health services; and

50 (10) Researching for new insights and innovative solu-
51 tions to health problems.

52 (i) "Licensing boards" means those boards charged with
53 regulating an occupation, business or profession and on
54 which the commissioner serves as a member;

55 (j) "Local board of health," "local board" or "board"
56 means a board of health serving one or more counties or
57 one or more municipalities or a combination thereof;

58 (k) "Local health department" means the staff of the
59 local board of health;

60 (l) "Local health officer" means the individual physician
61 with a current West Virginia license to practice medicine
62 who supervises and directs the activities of the local health
63 department services, staff and facilities and is appointed
64 by the local board of health with approval by the commis-
65 sioner;

66 (m) "Municipal board of health" is one form of organiza-
67 tion for a local board of health and means a board of
68 health serving a single municipality;

69 (n) "Performance-based standards" means generally
70 accepted, objective standards such as rules or guidelines
71 against which public health performance can be measured;

72 (o) "Program plan" or "plan of operation" means the
73 annual plan for each local board of health that must be
74 submitted to the commissioner for approval;

75 (p) "Public water system" means any water supply or
76 system which regularly supplies or offers to supply water
77 for human consumption through pipes or other con-
78 structed conveyances, if serving at least an average of
79 twenty-five individuals per day for at least sixty days per
80 year, or which has at least fifteen service connections, and
81 shall include: (1) Any collection, treatment, storage and
82 distribution facilities under the control of the owner or
83 operator of the system and used primarily in connection
84 with the system; and (2) any collection or pretreatment
85 storage facilities not under such control which are used
86 primarily in connection with the system. A public water
87 system does not include a system which meets all of the
88 following conditions: (1) Which consists only of distribu-
89 tion and storage facilities (and does not have any collec-
90 tion and treatment facilities); (2) which obtains all of its
91 water from, but is not owned or operated by, a public
92 water system which otherwise meets the definition; (3)
93 which does not sell water to any person; and (4) which is
94 not a carrier conveying passengers in interstate commerce;

95 (q) "Secretary" means the secretary of the state depart-
96 ment of health and human resources;

97 (r) "Service area" means the territorial jurisdiction of a
98 local board of health;

99 (s) "State advisory council on public health" is the
100 advisory body charged by this article with providing
101 advice to the commissioner with respect to the provision of
102 adequate public health services for all areas in the state;

103 (t) "State board of health" means, and refers to, the
104 secretary, notwithstanding any other provision of this code
105 to the contrary, whenever and wherever in this code there
106 is a reference to the state board of health.

§16-1-3. Powers and duties of the secretary.

1 (a) The secretary may establish a state public health
2 system.

3 (b) All powers and duties of the director of health
4 previously established by former section ten of this article
5 that are not specifically included in this chapter as powers
6 and duties of the commissioner are powers and duties of
7 the secretary.

8 (c) As necessary for the effective, efficient and economi-
9 cal operation of the system, the secretary may from time to
10 time delegate, assign, transfer or combine responsibilities
11 or duties to or among employees of the department.

12 (d) Within the limits of applicable federal law, the
13 secretary may require every applicant for a license, permit,
14 certificate of registration, or registration under this
15 chapter to place his or her social security number on the
16 application.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules, in accordance with the
2 provisions of article three, chapter twenty-nine-a of the
3 code, that are necessary and proper to effectuate the
4 purposes of this chapter. The secretary may appoint or
5 designate advisory councils of professionals in the areas of
6 hospitals, nursing homes, barbers and beauticians, post-

7 mortem examinations, mental health and mental retarda-
8 tion centers and any other areas necessary to advise the
9 secretary on rules.

10 The rules may include, but are not limited to, the regula-
11 tion of:

12 (a) Land usage endangering the public health: *Provided*,
13 That no rules may be promulgated or enforced restricting
14 the subdivision or development of any parcel of land
15 within which the individual tracts, lots or parcels exceed
16 two acres each in total surface area and which individual
17 tracts, lots or parcels have an average frontage of not less
18 than one hundred fifty feet even though the total surface
19 area of the tract, lot or parcel equals or exceeds two acres
20 in total surface area, and which tracts are sold, leased or
21 utilized only as single family dwelling units. Notwith-
22 standing the provisions of this subsection, nothing in this
23 section may be construed to abate the authority of the
24 department to: (1) Restrict the subdivision or development
25 of a tract for any more intense or higher density occupancy
26 than a single family dwelling unit; (2) propose or enforce
27 rules applicable to single family dwelling units for single
28 family dwelling unit sanitary sewerage disposal systems;
29 or (3) restrict any subdivision or development which might
30 endanger the public health, the sanitary condition of
31 streams, or sources of water supply;

32 (b) The sanitary condition of all institutions and schools,
33 whether public or private, public conveyances, dairies,
34 slaughterhouses, workshops, factories, labor camps, all
35 other places open to the general public and inviting public
36 patronage or public assembly, or tendering to the public
37 any item for human consumption, and places where trades
38 or industries are conducted;

39 (c) Occupational and industrial health hazards, the
40 sanitary conditions of streams, sources of water supply,

41 sewerage facilities and plumbing systems and the qualifi-
42 cations of personnel connected with any of those facilities,
43 without regard to whether the supplies or systems are
44 publicly or privately owned; and the design of all water
45 systems, plumbing systems, sewerage systems, sewage
46 treatment plants, excreta disposal methods and swimming
47 pools in this state, whether publicly or privately owned;

48 (d) Safe drinking water, including:

49 (1) The maximum contaminant levels to which all public
50 water systems must conform in order to prevent adverse
51 effects on the health of individuals, and, if appropriate,
52 treatment techniques that reduce the contaminant or
53 contaminants to a level which will not adversely affect the
54 health of the consumer. The rule shall contain provisions
55 to protect and prevent contamination of wellheads and
56 well fields used by public water supplies so that contami-
57 nants do not reach a level that would adversely affect the
58 health of the consumer;

59 (2) The minimum requirements for: Sampling and
60 testing; system operation; public notification by a public
61 water system on being granted a variance or exemption or
62 upon failure to comply with specific requirements of this
63 section and rules promulgated under this section; record
64 keeping; laboratory certification; as well as procedures
65 and conditions for granting variances and exemptions to
66 public water systems from state public water systems
67 rules; and

68 (3) The requirements covering the production and
69 distribution of bottled drinking water and may establish
70 requirements governing the taste, odor, appearance and
71 other consumer acceptability parameters of drinking
72 water;

73 (e) Food and drug standards, including cleanliness,
74 proscription of additives, proscription of sale and other

75 requirements in accordance with article seven of this
76 chapter, as are necessary to protect the health of the
77 citizens of this state;

78 (f) The training and examination requirements for
79 emergency medical service attendants and emergency
80 medical care technician-paramedics; the designation of the
81 health care facilities, health care services, and the indus-
82 tries and occupations in the state that must have emer-
83 gency medical service attendants and emergency medical
84 care technician-paramedics employed, and the availabil-
85 ity, communications, and equipment requirements with
86 respect to emergency medical service attendants and to
87 emergency medical care technician-paramedics: *Provided,*
88 That any regulation of emergency medical service atten-
89 dants and emergency medical care technician paramedics
90 shall not exceed the provisions of article four-c of this
91 chapter.

92 (g) The health and sanitary conditions of establishments
93 commonly referred to as bed and breakfast inns. For
94 purposes of this article, "bed and breakfast inn" means an
95 establishment providing sleeping accommodations and, at
96 a minimum, a breakfast for a fee: *Provided,* That the
97 secretary may not require an owner of a bed and breakfast
98 providing sleeping accommodations of six or fewer rooms
99 to install a restaurant style or commercial food service
100 facility: *Provided, however,* That the secretary may not
101 require an owner of a bed and breakfast providing sleep-
102 ing accommodations of more than six rooms to install a
103 restaurant-type or commercial food service facility if the
104 entire bed and breakfast inn or those rooms numbering
105 above six are used on an aggregate of two weeks or less per
106 year;

107 (h) Fees for services provided by the bureau for public
108 health including, but not limited to, laboratory service

109 fees, environmental health service fees, health facility fees
110 and permit fees;

111 (i) The collection of data on health status, the health
112 system and the costs of health care; and

113 (j) Other health-related matters which the department is
114 authorized to supervise and for which the rule-making
115 authority has not been otherwise assigned.

§16-1-5. State health officer; appointment; qualifications; term.

1 The commissioner of the bureau for public health is the
2 state health officer and shall be appointed by the secre-
3 tary. The commissioner shall be a physician licensed
4 under the laws of this state to practice medicine or a
5 person holding a doctorate degree in public health admin-
6 istration. The commissioner shall have not less than four
7 years' experience in health services administration or a
8 related field. The commissioner serves at the will and
9 pleasure of the secretary and shall not be actively engaged
10 or employed in any other business, vocation or employ-
11 ment, serving full time in the duties of the office as
12 prescribed by this article.

§16-1-6. Powers and duties of the commissioner.

1 The commissioner is the chief executive, administrative
2 and fiscal officer of the bureau for public health and has
3 the following powers and duties:

4 (a) To supervise and direct the fiscal and administrative
5 matters of the bureau, and in that regard and in accord-
6 ance with law, employ, fix the compensation of and
7 discharge all persons necessary for the proper execution of
8 the public health laws of this state and the efficient and
9 proper discharge of the duties imposed upon, and execu-
10 tion of powers vested in the commissioner by law and as
11 directed by the secretary;

12 (b) To enforce all laws of this state concerning public
13 health; to that end, the commissioner shall make, or cause
14 to be made, investigations and inquiries respecting the
15 cause of disease, especially of epidemics and endemic
16 conditions, and the means of prevention, suppression or
17 control of those conditions; the source of sickness and
18 mortality, and the effects of environment, employment,
19 habits and circumstances of life on the public health. The
20 commissioner shall further make, or cause to be made,
21 inspections and examinations of food, drink and drugs
22 offered for sale or public consumption in the manner the
23 commissioner considers necessary to protect the public
24 health and shall report all violations of laws and rules
25 relating to the law to the prosecuting attorney of the
26 county in which the violations occur;

27 (c) To make complaint or cause proceedings to be
28 instituted against any person, corporation or other entity
29 for the violation of any public health law before any court
30 or agency, without being required to give security for
31 costs; the action may be taken without the sanction of the
32 prosecuting attorney of the county in which the proceed-
33 ings are instituted or to which the proceedings relate;

34 (d) To promote the provision of essential public health
35 services to citizens of this state;

36 (e) To monitor the administration, operation and coordi-
37 nation of the local boards of health and local health
38 officers;

39 (f) To develop and maintain a state plan of operation
40 that sets forth the needs of the state in the areas of public
41 health; goals and objectives for meeting those needs;
42 methods for achieving the stated goals and objectives; and
43 needed personnel, funds and authority for achieving the
44 goals and objectives;

45 (g) To collect data as may be required to foster knowl-
46 edge on the citizenry's health status, the health system and
47 costs of health care;

48 (h) To delegate to any appointee, assistant or employee
49 any and all powers and duties vested in the commissioner,
50 including, but not limited to, the power to execute con-
51 tracts and agreements in the name of the bureau: *Pro-*
52 *vided*, That the commissioner is responsible for the acts of
53 his or her appointees, assistants and employees;

54 (i) To transfer at the direction of the secretary, notwith-
55 standing other provisions of this code, any patient or
56 resident between hospitals and facilities under the control
57 of the commissioner and, by agreement with the state
58 commissioner of corrections and otherwise in accord with
59 law, accept a transfer of a resident of a facility under the
60 jurisdiction of the state commissioner of corrections;

61 (j) To make periodic reports to the governor and to the
62 Legislature relative to specific subject areas of public
63 health, the state facilities under the supervision of the
64 commissioner, or other matters affecting the public health
65 of the people of the state, at the direction of the secretary;

66 (k) At the direction of the secretary, to accept and use for
67 the benefit of the health of the people of this state, any gift
68 or devise of any property or thing which is lawfully given:
69 *Provided*, That if any gift is for a specific purpose or for a
70 particular state hospital or facility it shall be used as
71 specified. Any profit which may arise from any gift or
72 devise of any property or thing shall be deposited in a
73 special revenue fund with the state treasurer and shall be
74 used only as specified by the donor or donors;

75 (l) To acquire by condemnation or otherwise any interest,
76 right, privilege, land or improvement and hold title to the
77 land or improvement, for the use or benefit of the state or
78 a state hospital or facility, and, by and with the consent of

79 the governor, and at the direction of the secretary, to sell,
80 exchange or otherwise convey any interest, right, privilege,
81 land or improvement acquired or held by the state, state
82 hospital or state facility and deposit the proceeds from the
83 sale, exchange or other conveyance into the hospital
84 services revenue account. Any condemnation proceedings
85 shall be conducted pursuant to chapter fifty-four of this
86 code;

87 (m) To inspect and enforce rules to control the sanitary
88 conditions of and license all institutions and health care
89 facilities as set forth in this chapter, including, but not
90 limited to, schools, whether public or private, public
91 conveyances, dairies, slaughterhouses, workshops, facto-
92 ries, labor camps, places of entertainment, hotels, motels,
93 tourist camps, all other places open to the general public
94 and inviting public patronage or public assembly, or
95 tendering to the public any item for human consumption
96 and places where trades or industries are conducted;

97 (n) To make inspections, conduct hearings, and to
98 enforce the legislative rules concerning occupational and
99 industrial health hazards, the sanitary condition of
100 streams, sources of water supply, sewerage facilities, and
101 plumbing systems, and the qualifications of personnel
102 connected with the supplies, facilities or systems without
103 regard to whether they are publicly or privately owned;
104 and to make inspections, conduct hearings and enforce the
105 legislative rules concerning the design of chlorination and
106 filtration facilities and swimming pools;

107 (o) To provide in accordance with this subdivision and
108 the definitions and other provisions of article one-a,
109 chapter twenty-seven of this code, and as directed by the
110 secretary, for a comprehensive program for the care,
111 treatment and rehabilitation of alcoholics and drug
112 abusers; for research into the cause and prevention of
113 alcoholism and drug abuse; for the training and employ-

114 ment of personnel to provide the requisite rehabilitation of
115 alcoholics and drug abusers; and for the education of the
116 public concerning alcoholism and drug abuse;

117 (p) To provide in accordance with this subdivision for a
118 program for the care, treatment and rehabilitation of the
119 parents of sudden infant death syndrome victims; for the
120 training and employment of personnel to provide the
121 requisite rehabilitation of parents of sudden infant death
122 syndrome victims; for the education of the public concern-
123 ing sudden infant death syndrome; for the responsibility of
124 reporting to the Legislature on a quarterly basis the
125 incidence of sudden infant death syndrome cases occurring
126 in West Virginia; for the education of police, employees
127 and volunteers of all emergency services concerning
128 sudden infant death syndrome; for the state sudden infant
129 death syndrome advisory council to develop regional
130 family support groups to provide peer support to families
131 of sudden infant death syndrome victims; and for request-
132 ing appropriation of funds in both federal and state
133 budgets to fund the sudden infant death syndrome pro-
134 gram;

135 (q) To establish and maintain a state hygienic laboratory
136 as an aid in performing the duties imposed upon the
137 commissioner, and to employ chemists, bacteriologists, and
138 other employees that may be necessary to properly operate
139 the laboratory. The commissioner may establish branches
140 of the state laboratory at any points within the state that
141 are necessary in the interest of the public health.

142 (r) To establish and fund a uniform health professionals
143 data system to collect and maintain uniform data on all
144 health professionals in the state. This data shall include,
145 but not be limited to, the following information about each
146 health professional: His or her name, profession, the area
147 of the state where he or she is practicing, his or her
148 educational background, his or her employer's name, and

149 number of years practicing within the profession. The
150 boards provided for in articles three, four, four-a, five,
151 seven, seven-a, fourteen, fourteen-a, fifteen, sixteen,
152 twenty, twenty-one, twenty-three, twenty-eight, thirty-
153 one, thirty-two, thirty-four, thirty-five, thirty-six and
154 thirty-seven, chapter thirty of this code shall annually
155 collect the data on health professionals under their
156 jurisdiction in the format prescribed by the commissioner.
157 Each board shall pay to the bureau annually, an amount
158 determined by the commissioner to be a pro rata portion,
159 for anticipated expenses to establish and operate the
160 uniform health professionals data system required by this
161 section. The commissioner may standardize data collec-
162 tion methods if necessary to implement the provisions of
163 this section. The commissioner shall publish annually and
164 make available, upon request, a report setting forth the
165 data which was collected the previous year; areas of the
166 state which the collected data indicates have a shortage of
167 health professionals; and projections, based upon the
168 collected data, as to the need for more health professionals
169 in certain areas;

170 (s) To expend, for the purpose of performing the public
171 health duties imposed on the bureau, or authorized by law,
172 any sums appropriated by the Legislature. The commis-
173 sioner may make advance payments to public and non-
174 profit health services providers when the commissioner
175 determines it is necessary for the initiation or continuation
176 of public health services. The advance payments, being in
177 derogation of the principle of payment only after receipt
178 of goods or services, shall be authorized only after serious
179 consideration by the commissioner of the necessity of the
180 advance payments and shall be for a period no greater
181 than ninety days in advance of rendition of service or
182 receipt of goods and continuation of health services; and

183 (t) To exercise all other powers delegated to the commis-
184 sioner by the secretary or by this chapter or otherwise in
185 this code, to enforce all health laws, and to pursue all
186 other activities necessary and incident to the authority and
187 area of concern entrusted to the bureau or the commis-
188 sioner.

**§16-1-7. Duties and powers of the commissioner; service on
advisory councils, boards and commissions; au-
thority to designate a representative to serve in his
or her place on certain boards and commissions.**

1 (a) The commissioner shall serve on the following
2 business, profession or occupation licensing boards:

3 (1) The West Virginia board of barbers and cosmetolo-
4 gists;

5 (2) The West Virginia board of chiropractic examiners;

6 (3) The West Virginia board of hearing aid dealers;

7 (4) The West Virginia board of medicine;

8 (5) The West Virginia nursing home administrators
9 licensing board;

10 (6) The West Virginia radiologic technology board of
11 examiners;

12 (7) The West Virginia board of registration for
13 sanitarians; and

14 (8) Any other licensing board or commission as directed
15 by the secretary.

16 (b) The commissioner shall serve on the following
17 advisory councils, boards and commissions:

18 (1) The advisory committee on cancer (cancer registry);

19 (2) The advisory committee on hemophilia;

- 20 (3) The air quality board;
- 21 (4) The Appalachian states low-level radioactive waste
22 commission;
- 23 (5) The attorney general of West Virginia public health
24 trust;
- 25 (6) The breast and cervical cancer screening program
26 advisory coalition;
- 27 (7) The child fatality review team;
- 28 (8) The clinical laboratories quality assurance act
29 advisory board;
- 30 (9) The childhood immunization advisory committee;
- 31 (10) The early intervention coordinating council;
- 32 (11) The interagency council on osteoporosis;
- 33 (12) The jail and prison standards commission;
- 34 (13) The medical service fund advisory council;
- 35 (14) The nursing home licensing advisory council;
- 36 (15) The sewage advisory board;
- 37 (16) The state emergency response commission;
- 38 (17) The state groundwater coordinating committee;
- 39 (18) The sudden infant death syndrome advisory council;
- 40 (19) The water development authority;
- 41 (20) The West Virginia commission for the deaf and hard
42 of hearing;
- 43 (21) The West Virginia infrastructure and jobs develop-
44 ment council;

45 (22) The West Virginia solid waste management board;
46 and

47 (23) Any other advisory council, board or commission as
48 assigned by the secretary.

49 (c) Notwithstanding any other provision of this code to
50 the contrary, the commissioner may, at his or her discre-
51 tion, designate in writing a representative to serve in his or
52 her stead at the meetings and in the duties of all boards
53 and commissions on which the commissioner is designated
54 as an ex officio member. The appropriately designated
55 representative or proxy may act with the full power and
56 authority of the commissioner in voting, acting upon
57 matters concerning the public health and welfare and any
58 other business that is properly the duty of any board or
59 commission, with the representative serving as proxy for
60 the commissioner at his or her will and pleasure: *Pro-*
61 *vided,* That the provisions of this section do not apply to
62 the medical licensing board, the air quality board or any
63 other board, commission or body on which the commis-
64 sioner is designated by this code as chairman ex officio,
65 secretary ex officio or any board, commission or body on
66 which the commissioner is designated by this code as being
67 that person whose signature must appear on licenses,
68 minutes or other documents necessary to carry out the
69 intents and purposes of the board, commission or body.

**§16-1-8. Duties and powers of the commissioner; authorization
to cooperate with any state health planning and
development agencies and any federal government
agencies in hospital and other health facility
programs.**

1 The commissioner at the direction of the secretary may
2 cooperate with any state health planning and development
3 agencies and any federal government agencies in programs
4 for construction of public or private hospitals, diagnostic

5 or treatment centers, chronic disease hospitals, rehabilita-
6 tion facilities, nursing homes and similar or related
7 facilities and institutions. The commissioner may make
8 inventories of existing public health centers, public and
9 private hospitals, diagnostic or treatment centers, chronic
10 disease hospitals, rehabilitation facilities, nursing homes
11 and similar or related facilities and institutions, and the
12 laboratories and other facilities thereof, to make surveys
13 of the need for construction of health facilities. The
14 commissioner may adopt, develop and supervise the
15 administration of the statewide plans or programs for the
16 construction of additional public and private hospitals,
17 public health centers, public or private diagnostic or
18 treatment centers, chronic disease hospitals, rehabilitation
19 facilities, nursing homes and similar or related facilities
20 and institutions, as may be necessary to comply with the
21 requirements and conditions of federal law in respect to
22 the granting of federal aid for those purposes. The com-
23 missioner, at the direction of the secretary, shall develop
24 standards to assure that all requirements to obtain federal
25 funds and meet the commitments for federal funds are
26 met.

27 The state health plan of operation set forth in this article
28 and the state medical facilities plan shall be a part of the
29 state health plan, as authorized by the provisions of article
30 two-d of this chapter.

**§16-1-9. Duties and powers of the commissioner; supervision
over local sanitation; violations; jurisdiction;
penalties.**

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or municipi-
3 pal, may install or establish any system or method of
4 drainage, water supply, or sewage or excreta disposal
5 without first obtaining a written permit to install or
6 establish the system or method from the commissioner or

7 his or her authorized representative. All systems or
8 methods shall be installed or established in accordance
9 with plans, specifications and instructions issued by the
10 commissioner or which have been approved in writing by
11 the commissioner or his or her authorized representative.

12 Whenever the commissioner or his or her authorized
13 representative finds, upon investigation, that any system
14 or method of drainage, water supply, or sewage or excreta
15 disposal, whether publicly or privately owned, has not
16 been installed in accordance with plans, specifications and
17 instructions issued by the commissioner or approved in
18 writing by the commissioner or his or her authorized
19 representative, the commissioner or his or her authorized
20 representative shall issue an order requiring the owner of
21 the system or method to make alterations necessary to
22 correct the improper condition. The alterations shall be
23 made within a reasonable time, which shall not exceed
24 thirty days, unless a time extension is authorized by the
25 commissioner or his or her authorized representative.

26 The presence of sewage or excreta being disposed of in
27 a manner not approved by the commissioner or his or her
28 authorized representative constitutes prima facie evidence
29 of the existence of a condition endangering public health.

30 The personnel of the bureau for public health shall be
31 available to consult and advise with any person, firm,
32 company, corporation, institution or association, whether
33 publicly or privately owned, county or municipal, or
34 public service authority, as to the most appropriate design,
35 method of operation or alteration of any system or method.

36 Any person, firm, company, corporation, institution or
37 association, whether public or private, county or municipi-
38 pal, violating any provision of this section is guilty of a
39 misdemeanor and, upon conviction thereof, shall be
40 punished by a fine of not less than fifty dollars nor more

41 than five hundred dollars. Any continuing failure or
42 refusal of the convicted person, firm, company, corpora-
43 tion, institution or association, whether public or private,
44 county or municipal, to make the alterations necessary to
45 protect the public health required by the commissioner or
46 his or her authorized representative is a separate, distinct
47 and additional offense for each twenty-four hour period of
48 failure or refusal, and, upon conviction thereof, the
49 violator shall be fined not less than fifty dollars nor more
50 than five hundred dollars for each conviction: *Provided,*
51 That none of the provisions contained in this section apply
52 to those commercial or industrial wastes that are subject
53 to the regulatory control of the West Virginia division of
54 environmental protection.

55 Magistrates have concurrent jurisdiction with the circuit
56 courts of this state for violations of any provisions of this
57 section.

**§16-1-9a. Public water system defined; regulation of maximum
contaminant levels in water systems; authorization
of inspections; violations; criminal, civil and
administrative penalties; safe drinking water
penalty fund.**

1 (a) A public water system is any water supply or system
2 that regularly supplies or offers to supply water for human
3 consumption through pipes or other constructed convey-
4 ances, if serving at least an average of twenty-five individ-
5 uals per day for at least sixty days per year, or which has
6 at least fifteen service connections, and shall include: (1)
7 Any collection, treatment, storage and distribution
8 facilities under the control of the owner or operator of
9 such system and used primarily in connection with such
10 system; and (2) any collection or pretreatment storage
11 facilities not under such control which are used primarily
12 in connection with such system. A public water system
13 does not include a system that meets all of the following

14 conditions: (1) Consists only of distribution and storage
15 facilities (and does not have any collection and treatment
16 facilities); (2) obtains all of its water from, but is not
17 owned or operated by, a public water system that other-
18 wise meets the definition; (3) does not sell water to any
19 person; and (4) is not a carrier conveying passengers in
20 interstate commerce.

21 (b)(1) The secretary shall prescribe by legislative rule the
22 maximum contaminant levels to which all public water
23 systems shall conform in order to prevent adverse effects
24 on the health of individuals, and, if the secretary considers
25 appropriate, treatment techniques that reduce the contam-
26 inant or contaminants to a level which will not adversely
27 affect the health of the consumer. The rule shall contain
28 provisions to protect and prevent contamination of
29 wellheads and well fields used by public water supplies so
30 that contaminants do not reach a level that would ad-
31 versely affect the health of the consumer.

32 (2) The secretary shall further prescribe by legislative
33 rule minimum requirements for: Sampling and testing;
34 system operation; public notification by a public water
35 system on being granted a variance or exemption or upon
36 failure to comply with specific requirements of this section
37 and regulations promulgated under this section; record
38 keeping; laboratory certification; as well as procedures
39 and conditions for granting variances and exemptions to
40 public water systems from state public water systems
41 regulations.

42 (3) In addition, the secretary shall establish by legislative
43 rule, in accordance with article three, chapter twenty-
44 nine-a of this code, requirements covering the production
45 and distribution of bottled drinking water and may by
46 legislative rule, in accordance with article three, chapter
47 twenty-nine-a of this code, establish requirements govern-

48 ing the taste, odor, appearance and other consumer
49 acceptability parameters of drinking water.

50 (c) Authorized representatives of the bureau have right
51 of entry to any part of a public water system, whether or
52 not the system is in violation of a legal requirement, for
53 the purpose of inspecting, sampling or testing, and shall be
54 furnished records or information reasonably required for
55 a complete inspection.

56 (d)(1) Any individual, partnership, association, syndi-
57 cate, company, firm, trust, corporation, government
58 corporation, institution, department, division, bureau,
59 agency, federal agency, or any entity recognized by law
60 who violates any provision of this section, or any of the
61 rules or orders issued pursuant to this section, is guilty of
62 a misdemeanor and, upon conviction thereof, shall be fined
63 not less than fifty dollars nor more than five hundred
64 dollars, and each day's violation shall constitute a separate
65 offense. The commissioner or his or her authorized
66 representative may also seek injunctive relief in the circuit
67 court of the county in which all or part of the public water
68 system is situated for threatened or continuing violations.

69 (2) For a willful violation of a provision of this section,
70 or of any of the rules or orders issued under this section for
71 which a penalty is not otherwise provided under subdivi-
72 sion (3) of this subsection, an individual, partnership,
73 association, syndicate, company, firm, trust, corporation,
74 government corporation, institution, department, division,
75 bureau, agency, federal agency, or entity recognized by
76 law, upon a finding of a willful violation by the circuit
77 court of the county in which the violation occurs, shall be
78 subject to a civil penalty of not more than five thousand
79 dollars, and each day's violation shall be grounds for a
80 separate penalty.

81 (3) The commissioner or his or her authorized represen-
82 tative shall have authority to assess administrative
83 penalties and initiate any proceedings necessary for the
84 enforcement of drinking water rules. The administrative
85 penalty for a violation of any drinking water rule is a
86 minimum of one thousand dollars per day per violation
87 and each day's violation shall be grounds for a separate
88 penalty. In any action brought to enforce drinking water
89 rules, the administrative penalty may not exceed an
90 aggregate amount of five thousand dollars for systems
91 serving a population of less than ten thousand persons and
92 may not exceed twenty-five thousand dollars for systems
93 serving a population of ten thousand persons or more.
94 Penalties are payable to the commissioner. All moneys
95 collected under this section shall be deposited into a
96 restricted account known as the safe drinking water
97 penalty fund previously created in the office of the state
98 treasurer. All money deposited into the fund shall be used
99 by the commissioner to provide technical assistance to
100 public water systems.

**§16-1-9b. Permit approval for individual systems with surface
water discharge; reserve areas.**

1 Individual systems with surface water discharge may be
2 considered for approval for a permit pursuant to section
3 nine of this article under the following conditions: (1) To
4 correct existing failures when other means of treatment
5 and disposal have proven ineffective; (2) on a tract, lot or
6 parcel of land that equals or exceeds two acres which
7 cannot qualify for standard or alternative soil absorption
8 systems; or (3) on existing lots which received approval
9 under a prior permit where it has been determined that
10 applicable standards cannot be met to qualify for a
11 standard or alternate soil absorption system. Approval
12 under these conditions are applicable only to single family
13 residential units.

14 When installing a standard sewage disposal system,
15 modified system, experimental system or other approved
16 system, the reserve area shall consist of an area for the
17 placement of the original system together with an area for
18 replacement and upgrade of absorption field lines within
19 the reserve area. Testing of the site for approval shall
20 consist of a six foot hole and a percolation test of the soils.

**§16-1-10. Disposition of permit, license or registration fees
received by the commissioner; report to auditor;
health facility licensing account.**

1 (a) The commissioner shall receive and account for all
2 moneys required to be paid as fees to the bureau for
3 permits, licenses or registrations, pursuant to the provi-
4 sions of this code and legislative rules.

5 (b) Subject to the provisions set forth in section two,
6 article two, chapter twelve of this code, there is continued
7 in the state treasury a separate account which shall be
8 designated "the health facility licensing account". The
9 commissioner shall deposit to the health facility licensing
10 account all health facility licensing fees and may spend the
11 moneys deposited in the health facility licensing account
12 in accordance with the laws of this state to implement
13 activities of health facility licensing. As part of the annual
14 state budget, the Legislature shall appropriate for health
15 facility licensure all moneys deposited in the health
16 facilities licensing account.

17 Any remaining balance including accrued interest in the
18 account at the end of any fiscal year shall not revert to the
19 general revenue fund, but shall remain in the account, and
20 the moneys may be spent after appropriation by the
21 Legislature in ensuing fiscal years. The commissioner
22 shall make an annual report to the Legislature on the
23 health facility licensing account, including the previous

24 fiscal year's expenditures and projected expenditures for
25 the next fiscal year.

**§16-1-11. Disposition of fees for services charged and received
by the commissioner; health services fund.**

1 (a) Notwithstanding any other provisions of this chapter,
2 the commissioner may assess and charge reasonable fees
3 for the provision of services provided by the bureau:
4 *Provided*, That no individual may be denied health care
5 services by the bureau because of the inability of the
6 individual to pay for services when services are provided
7 to similarly situated individuals who have the ability to
8 pay for them. The fees shall be deposited into a special
9 revolving fund in the state treasury designated the "health
10 services fund".

11 (b) Any balance including accrued interest in the special
12 revolving fund at the end of any fiscal year shall not revert
13 to the general revenue fund but shall remain in the fund
14 for use by the commissioner for funding health programs
15 in the ensuing fiscal years.

16 (c) The commissioner may authorize reasonable fees for
17 the provision of services by local boards of health as
18 created in article two of this chapter: *Provided*, That no
19 individual may be denied health care services by the local
20 health department because of the inability of the individ-
21 ual to pay for services when services are provided to
22 similarly situated individuals who have the ability to pay
23 for them. The fees shall be deposited into the local board
24 of health account for use by the local board for funding
25 health programs. The commissioner shall establish the
26 fees on a sliding fee basis determined by an individual's
27 ability to pay: *Provided, however*, That the local board of
28 health may submit a request through the administrator for
29 third party reimbursement where the request is appropri-
30 ate: *Provided further*, That local boards of health that

31 establish fees shall annually submit a schedule of fees, a
32 sliding fee scale and an accounting of amounts collected to
33 the commissioner as part of its program plan or plan of
34 operation.

35 (d) The secretary shall propose legislative rules in
36 accordance with article three, chapter twenty-nine-a of
37 this code, setting forth the fees established, assessed, and
38 charged by the commissioner.

**§16-1-12. Receipt and disbursement of federal aid and other
moneys for health purposes.**

1 (a) The commissioner, at the direction of the secretary,
2 may accept, receive and receipt for federal moneys and
3 other moneys, either public or private, for and in behalf of
4 this state or any county or municipality of this state, for
5 public health purposes, or for the establishment or con-
6 struction of public health facilities, whether the work is to
7 be done by the state, or by the county or municipality, or
8 jointly, aided by grants of aid from the United States,
9 upon such terms and conditions as are, or may be, pre-
10 scribed by the laws of the United States and regulations
11 made thereunder. The commissioner may act as the agent
12 of the state or any of its agencies, or of any county or
13 municipality of this state, upon the request of any agency
14 of the state or of any county or municipality, in accepting,
15 receiving and receipting for the moneys in its behalf, for
16 public health facilities financed either, in whole or in part,
17 by federal moneys.

18 (b) The state, or any agency of the state, or any county or
19 municipality may, designate the commissioner as its agent
20 for the purposes set forth in subsection (a) of this section
21 and the agency, county or municipality may enter into an
22 agreement with the commissioner prescribing the terms
23 and conditions of the agency in accordance with federal
24 laws and regulations, and with the laws of this state. The

25 moneys paid over by the United States government shall
26 be retained by the state or paid over to the counties or
27 municipalities under the terms and conditions imposed by
28 the United States government in making the grants.

29 (c) All moneys accepted for disbursement pursuant to
30 this section shall be deposited by the secretary or the
31 commissioner in the state treasury, and unless otherwise
32 prescribed by the authority from which the money is
33 received, kept in separate funds, designated according to
34 the purpose for which the moneys were made available,
35 and held by the state in trust for those purposes. All
36 moneys are hereby appropriated for the purposes for
37 which the moneys were made available and shall be
38 expended in accordance with federal laws and regulations
39 and with the laws of this state. The commissioner may,
40 whether acting for the state or one of its agencies, or as the
41 agency for any county or municipality, when requested by
42 the United States government or any agency or depart-
43 ment of the United States government, or when requested
44 by the state, a state agency, or any county or municipality
45 for which the moneys have been made available, disburse
46 the moneys for the designated purposes, but this shall not
47 include any other authorized method of disbursement.

**§16-1-13. Hospital services revenue account; health facilities
long-range plans.**

1 (a) Subject to the provisions set forth in section two,
2 article two, chapter twelve of this code, there is continued
3 in the state treasury a separate account which shall be
4 designated the "hospital services revenue account". The
5 secretary shall deposit promptly into the account any fees
6 received by a facility owned and operated by the depart-
7 ment from whatever source including the federal govern-

8 ment, state government or other third-party payer or
9 personal payment.

10 (b) A five-year health facilities long-range plan shall be
11 developed by the secretary and shall be adopted as a rule
12 in accordance with this chapter and article three, chapter
13 twenty-nine-a of this code. The health facilities long-
14 range plan shall be updated and revised at least every two
15 years.

16 (c) The secretary may spend the moneys deposited in the
17 hospital services revenue account in accordance with
18 federal laws and regulations and with the laws of this
19 state as necessary for the development of the five-year
20 health facilities long-range plan and subsequent revisions.
21 The secretary may spend the moneys deposited in the
22 hospital services revenue account as provided for in the
23 health facilities long-range plan at those times and in the
24 amounts the secretary determines necessary for the
25 purpose of improving the delivery of health and mental
26 health services or for the purpose of maintaining or
27 obtaining certification at a state health or mental health
28 facility: *Provided*, That all disproportionate share hospi-
29 tal funds received into the account shall be transferred by
30 intergovernmental transfer to the medical services trust
31 fund created in section two-a, article four-a, chapter nine
32 of this code, except for funds appropriated by the Legisla-
33 ture for other purposes within the annual budget bill:
34 *Provided, however*, That during any fiscal year in which
35 the secretary anticipates spending any money from the
36 account, he or she shall submit to the executive depart-
37 ment during the budget preparation period prior to the
38 Legislature convening, before that fiscal year for inclusion
39 in the executive budget document and budget bill, his or
40 her recommended capital investments, recommended
41 priorities and estimated costs, as well as requests of
42 appropriations for the purpose of improving the delivery

43 of health or for the purpose of maintaining or obtaining
44 certification at a state health facility in the amounts the
45 secretary determines to be necessary for the development
46 of, and as provided for in, the five-year health facilities
47 long-range plan and subsequent revisions.

48 (d) The secretary shall make an annual report to the
49 Legislature on the status of the health services revenue
50 account, including the previous year's expenditures and
51 projected expenditures for the next year.

§16-1-14. Training of employees.

1 To insure adequate standards of public service, the
2 commissioner may provide technical and specialized
3 instruction for employees of the bureau.

4 If upon review of the personnel records of any employee
5 of the bureau, the commissioner is of the opinion that it
6 would be in the best interest of the bureau to provide the
7 employee with additional training or instruction, not to
8 exceed nine months in any four-year period, in the field or
9 vocation in which the employee is engaged, the commis-
10 sioner may, upon approval of the secretary, direct that the
11 employee obtain the additional training or instruction at
12 any place the commissioner considers suitable. Designated
13 attendance of the employee shall be compensated for as a
14 part of regular employment. The commissioner is further
15 authorized to pay out of federal funds and such state funds
16 as are available to match such federal funds, any required
17 tuition or enrollment fees.

**§16-1-15. Investigations and hearings; power to administer
oaths, subpoena witnesses, etc.; use of information
and material acquired.**

1 (a) The secretary, the commissioner, any officer or
2 employee of the department designated by the secretary,
3 or any other individual designated by the secretary may

4 hold investigations, inquiries and hearings concerning
5 matters covered by the laws of this state pertaining to
6 public health and within the authority and the rules and
7 orders of the secretary. Hearings shall be open to the
8 public and shall be held upon any call or notice considered
9 advisable by the secretary.

10 (b) Each individual designated to hold any inquiry,
11 investigation or hearing shall have the power to adminis-
12 ter oaths and affirmations, certify to all official acts, issue
13 subpoenas and order the attendance and testimony of
14 witnesses in the production of papers, books and docu-
15 ments. In case of the failure of any person to comply with
16 any subpoena or order issued under the authority of this
17 section, the secretary or his or her authorized representa-
18 tive may invoke the aid of any circuit court of this state.
19 The court may thereupon order that person to comply with
20 the requirements of the subpoena order or to give evidence
21 as to the matter in question. Failure to obey the order of
22 the court may be punished by the court as a contempt of
23 court.

24 (c) Subject to the provisions of subsections (a) and (b) of
25 this section, the secretary may in his or her discretion
26 make available to appropriate federal, state and municipal
27 agencies information and material developed in the course
28 of its investigation and hearings: *Provided*, That informa-
29 tion obtained from studies or from any investigation made
30 or hearing held pursuant to the provisions of this article
31 may not be admissible in evidence in any action at law to
32 recover damages for personal injury or in any action under
33 the workers' compensation act, but the information, if
34 available, shall be furnished upon request to the commis-
35 sioner of the bureau of employment programs for the sole
36 purpose of adjusting claims presented to the commissioner.

§16-1-16. Public health advisory council; duties; composition; appointment; meetings; compensation; expenses and continuation.

1 (a) The public health advisory council is hereby created
2 as an advisory body to the commissioner for the purpose of
3 advising the commissioner as to the provision of adequate
4 public health services for all areas in the state.

5 (b) The council may advise the commissioner in all
6 matters pertaining to the commissioner's duties and
7 functions concerning public health and the provisions of
8 this chapter. The council may review all state public
9 health rules and advise the commissioner on necessary
10 revisions. The council may advise the commissioner on the
11 need for additional or special advisory committees to
12 assist the council in matters concerning public health in
13 relation to any business, profession or industry in the
14 state. The council shall review all performance based
15 standards and assist the commissioner in the development
16 and implementation of a coordinated, population-based
17 prevention oriented program that promotes and protects
18 the health of all citizens of West Virginia.

19 (c) The council shall be composed of fifteen members
20 appointed by the governor by and with the advice and
21 consent of the Senate. The state insurance commissioner
22 or his or her designated representative shall serve as a
23 member ex officio. Twelve members shall be chosen from
24 nominations by: (1) The West Virginia association of local
25 health officers which shall submit to the governor a list of
26 three names of local health officers; (2) the West Virginia
27 association of local health departments which shall submit
28 to the governor a list of three names of members of local
29 boards of health; (3) the West Virginia association of
30 county commissioners which shall submit to the governor
31 a list of three names of representatives from its associa-
32 tion; (4) the West Virginia association of sanitarians which

33 shall submit to the governor a list of three names of
34 representatives from its association; (5) the West Virginia
35 hospital association which shall submit to the governor a
36 list of three names of representatives from its association;
37 (6) the West Virginia medical association which shall
38 submit to the governor a list of three names of representa-
39 tives from its association; (7) the West Virginia emergency
40 medical services coalition, which shall submit to the
41 governor a list of three names of representatives from its
42 association; (8) the West Virginia primary care association
43 which shall submit to the governor a list of three names of
44 representatives from its association; (9) the nursing section
45 of the West Virginia public health association which shall
46 submit to the governor a list of three names of public
47 health nurses; (10) the state college and university systems
48 of West Virginia which shall submit to the governor a list
49 of three names of representatives from its members; (11)
50 the state health education council which shall submit to
51 the governor a list of three names of individuals from the
52 prevention and wellness community; and (12) the state
53 chamber of commerce which shall submit to the governor
54 a list of three names of representatives from the business
55 community. The governor shall appoint one individual
56 from each list submitted to serve on the council. In
57 addition the governor shall appoint two persons to repre-
58 sent the general public.

59 (d) Pursuant to the provisions of this section, the gover-
60 nor shall appoint an advisory council on the first day of
61 July, two thousand. Of those first members appointed,
62 one-third shall serve for one year, one-third shall serve for
63 two years and one-third shall serve for three years. Each
64 subsequent term shall be a three year term and no member
65 may serve more than four consecutive terms.

66 (e) The advisory council shall choose its own chairperson
67 and meet at the call of the commissioner at least twice a year.

68 (f) The members of the council shall receive compensa-
69 tion and expense reimbursement in an amount not to
70 exceed the same compensation and expense reimburse-
71 ment that is paid to members of the Legislature for their
72 interim duties as recommended by the citizens legislative
73 compensation commission and authorized by law, for each
74 day or substantial portion of a day engaged in the perfor-
75 mance of official duties.

76 (g) Pursuant to the provisions of article ten, chapter four
77 of this code, the state advisory council on public health
78 shall continue to exist until the first day of July, two
79 thousand three.

**§16-1-17. Penalties for interfering with examiners, inspectors
or other authorized representatives of the com-
missioner in the performance of duty.**

1 The commissioner may employ such administrative
2 employees, inspectors, examiners or other persons as may
3 be necessary to properly carry out the provisions of the
4 public health laws of this state. The inspectors, examiners
5 and other employees shall act as the commission's repre-
6 sentatives and, under his or her direction, shall enforce the
7 provisions of the public health laws and all duly promul-
8 gated public health rules and in the discharge of official
9 duties, shall have the right of entry into any institution or
10 school, whether public or private, public conveyances,
11 dairy, creamery, slaughterhouse, workshop, factory, labor
12 camp, place of entertainment, hotel, tourist camp, all other
13 places open to the general public and inviting public
14 patronage or public assembly, or tendering to the public
15 any item for human consumption, and places where
16 hazardous trades or industries are conducted.

17 Any person interfering with or attempting to interfere
18 with any inspector, examiner, or other duly authorized
19 employee of the commissioner in the discharge of his or
20 her duties under this section is guilty of a misdemeanor
21 and, upon conviction thereof, shall be fined not less than
22 fifty dollars nor more than five hundred dollars.

§16-1-18. Penalties for violating provisions of article.

1 Any person violating any of the provisions of this article
2 for which the penalty is not otherwise provided, or any of
3 the rules or orders issued pursuant to this article, shall be
4 punishable by a fine of not less than fifty dollars nor more
5 than five hundred dollars.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-1. Purpose.

1 Local boards of health, created, established and oper-
2 ated pursuant to the provisions of this article, are respon-
3 sible for directing, supervising and carrying out matters
4 relating to the public health of their respective counties or
5 municipalities. This article provides that local boards of
6 health may be organized as boards of health serving a
7 single municipality, a single county or a combination of
8 any two or more counties or any county or counties and
9 one or more municipalities within or partially within the
10 county or counties. This article establishes uniform
11 provisions applicable to all local boards of health, what-
12 ever organizational form is elected, to insure the consistent
13 performance of duties relating to basic public health
14 services and other health services and the enforcement of
15 the laws of this state pertaining to public health.

§16-2-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Basic public health services" means those services
4 that are necessary to protect the health of the public and
5 that a local board of health must provide. The three areas
6 of basic public health services are communicable and
7 reportable disease prevention and control, community
8 health promotion, and environmental health protection;

9 (b) "Bureau" means the bureau for public health in the
10 department of health and human resources;

11 (c) "Clinical and categorical programs" means those
12 services provided to individuals of specified populations
13 and usually focus on health promotion or disease preven-
14 tion. These services are not considered comprehensive
15 health care but focus on specific health issues such as
16 breast and cervical cancer, prenatal and pediatric health
17 services and home health services;

18 (d) "Combined local board of health" is one form of
19 organization for a local board of health and means a board
20 of health serving any two or more counties or any county
21 or counties and one or more municipalities within or
22 partially within the county or counties;

23 (e) "Commissioner" means the commissioner of the
24 bureau for public health, who is the state health officer;

25 (f) "Communicable and reportable disease prevention
26 and control" is one of three areas of basic public health
27 services each local board of health must offer. Services
28 shall include disease surveillance, case investigation and
29 follow-up, outbreak investigation, response to epidemics,
30 and prevention and control of rabies, sexually transmitted
31 diseases, vaccine preventable diseases, HIV/AIDS, tuber-
32 culosis and other communicable and reportable diseases;

33 (g) "Community health promotion" is one of three areas
34 of basic public health services each local board of health
35 must offer. Services shall include assessing and reporting

36 community health needs to improve health status, faci-
37 tating community partnerships including identifying the
38 community's priority health needs, mobilization of a
39 community around identified priorities, and monitoring
40 the progress of community health education services;

41 (h) "County board of health" is one form of organization
42 for a local board of health and means a local board of
43 health serving a single county;

44 (i) "Department" means the West Virginia department of
45 health and human resources;

46 (j) "Director" or "director of health" means the state
47 health officer. Administratively within the department,
48 the bureau for public health through its commissioner
49 carries out the public health function of the department,
50 unless otherwise assigned by the secretary;

51 (k) "Environmental health protection" is one of three
52 areas of basic public health services each local board of
53 health must offer. Services shall include efforts to protect
54 the community from environmental health risks including,
55 inspection of housing, institutions, recreational facilities,
56 sewage and wastewater facilities; inspection and sampling
57 of drinking water facilities; and response to disease
58 outbreaks or disasters;

59 (l) "Enhanced public health services" means services
60 that focus on health promotion activities to address a
61 major health problem in a community, are targeted to a
62 particular population and assist individuals in this popu-
63 lation to access the health care system, such as lead and
64 radon abatement for indoor air quality and positive
65 pregnancy tracking. Enhanced public health services are
66 services a local health department may offer;

67 (m) "Local board of health," "local board" or "board"
68 means a board of health serving one or more counties or
69 one or more municipalities or a combination thereof;

70 (n) "Local health department" means the staff of the
71 local board of health;

72 (o) "Local health officer" means the individual physician
73 with a current West Virginia license to practice medicine
74 who supervises and directs the activities of the local health
75 department services, staff and facilities and is appointed
76 by the local board of health with approval by the commis-
77 sioner;

78 (p) "Municipal board of health" is one form of organiza-
79 tion for a local board of health and means a board of
80 health serving a single municipality;

81 (q) "Performance-based standards" means generally
82 accepted, objective standards such as rules or guidelines
83 against which a local health department's level of perfor-
84 mance can be measured.

85 (r) "Primary care services" means health care services,
86 including medical care, that emphasize first contact
87 patient care and assume overall and ongoing responsibility
88 for the patient in health maintenance and treatment of
89 disease. Primary care services are services that local
90 boards of health may offer if the board has determined
91 that an unmet need for primary care services exists in its
92 service area. Basic public health services funding may not
93 be used to support these services;

94 (s) "Program plan" or "plan of operation" means the
95 annual plan for each local board of health that must be
96 submitted to the commissioner for approval;

97 (t) "Secretary" means the secretary of the state depart-
98 ment of health and human resources; and

99 (u) "Service area" means the territorial jurisdiction of
100 the local board of health.

§16-2-3. Authority to create, establish and maintain county boards of health; service area.

1 A county commission shall create, establish and main-
2 tain a county board of health if no other local board of
3 health organized under this article is established and
4 responsible for public health in the service area. The
5 county board of health shall be organized pursuant to and
6 with the powers and duties prescribed by this article. The
7 service area of any county board of health is the county
8 territorial limits and includes every municipality within
9 the county that does not have a municipal board of health
10 maintaining a separate full-time municipal health depart-
11 ment under the supervision of a municipal local health
12 officer or that is not a member of a combined local board
13 of health.

§16-2-4. Authority to create, establish and maintain municipal boards of health; service area.

1 The governing body of a municipality may create,
2 establish and maintain a municipal board of health
3 organized pursuant to and with the powers and duties
4 prescribed by this article. The territorial jurisdiction of
5 any municipal board of health is an area including the
6 municipality and all points within a distance of one mile
7 from the limits of the municipality.

§16-2-5. Authority to create, establish and maintain combined local boards of health; service area.

1 Any two or more counties or any county or counties and
2 one or more municipalities within or partially within the
3 county or counties may combine to create, establish and
4 maintain a combined local board of health organized
5 pursuant to and with the powers and duties prescribed by

6 this article. The plan of combination must be approved by
7 the commissioner. The service area of any combined local
8 board of health is the combined territorial limits of the
9 participating municipality or municipalities and county or
10 counties: *Provided*, That if all or a portion of a participat-
11 ing municipality is located in a nonparticipating county,
12 the service area of the combined local board of health is
13 limited to the territorial limits of the municipality and
14 does not extend to or include any area of the nonpartici-
15 pating county outside of the municipal limits: *Provided*,
16 *however*, That the service area of a combined local board
17 does not extend to or include any area within the service
18 area of a municipal board of health maintaining a separate
19 full-time municipal health department under the supervi-
20 sion of a municipal local health officer.

**§16-2-6. Appointment to and composition of municipal boards
of health; qualifications; number of appointees.**

1 A municipal board of health is composed of five mem-
2 bers selected and appointed by vote of the governing body
3 of the municipality. Each member appointed to a municipi-
4 pal board of health shall be a resident of the municipality.
5 No more than two members who reside in the same
6 municipal ward may be appointed and no more than two
7 members may be appointed who are personally licensed or
8 certified in, engaged in, or actively participating in the
9 same business, profession or occupation. No more than
10 three members of a municipal board of health may belong
11 to the same political party.

**§16-2-7. Appointment to and composition of county boards of
health; qualifications; number of appointees.**

1 A county board of health is composed of five members
2 selected and appointed by vote of the county commission.
3 Each member appointed to the county board of health
4 shall be a resident of the county. No more than two

5 members who reside in the same magisterial district may
6 be appointed and no more than two members may be
7 appointed who are personally licensed or certified in,
8 engaged in, or actively participating in the same business,
9 profession or occupation. No more than three members of
10 a county board of health may belong to the same political
11 party.

**§16-2-8. Appointment to and composition of combined local
boards of health; qualifications; number of ap-
pointees.**

1 A combined local board of health is composed of at least
2 five members. The number of combined local board of
3 health members to be selected by each participating
4 county or municipality shall be established by agreement
5 of the participating counties or municipalities. No more
6 than one half of the members of a combined local board of
7 health may be personally licensed or certified in, engaged
8 in, or actively participating in the same business, profes-
9 sion or occupation. The number of members of a combined
10 local board of health belonging to the same political party
11 may not exceed by more than one the number of members
12 belonging to another political party. No member may be
13 selected and appointed by and represent more than one
14 participating county or municipality.

15 The county commission of each participating county
16 may select and appoint by vote no fewer than one and no
17 more than three persons to serve as the representatives of
18 the county on the combined local board of health. Each
19 member appointed as a county representative to the
20 combined local board of health shall be a resident of the
21 participating county. No more than two persons residing
22 in the same magisterial district may be appointed by a
23 participating county as members and no more than two
24 members may be appointed by a participating county who

25 are personally licensed or certified in, engaged in, or
26 actively participating in the same business, profession or
27 occupation.

28 The governing body of each participating municipality
29 may select and appoint by vote no fewer than one and no
30 more than three persons to serve as the representatives of
31 the municipality on the combined local board of health.
32 Each member appointed as a municipality's representative
33 to the combined local board of health shall be a resident of
34 the municipality. No more than two members who reside
35 in the same municipal ward may be appointed and no
36 more than two members may be appointed who are
37 personally licensed or certified in, engaged in, or actively
38 participating in the same business, profession or occupa-
39 tion.

40 Upon the formation of a combined local board of health
41 and during the duration of its existence, there may be no
42 separate county board of health or municipal board of
43 health in any county or any municipality participating in
44 the combined local board of health.

**§16-2-9. Local board of health; terms of appointment; reap-
pointment; oath of office; vacancies; removal;
compensation; expenses.**

1 (a) The term of office for members selected and ap-
2 pointed to a local board of health pursuant to the provi-
3 sions of this article is five years. Members may serve until
4 their duly qualified successors are selected and appointed
5 by vote of the original appointing authority. Members
6 may be reappointed for additional terms of five years.
7 Board members' oaths of office shall be duly recorded
8 before entering into or discharging any duties of the office.

9 (b) Any vacancy on any local board of health shall be
10 filled by appointment of the original appointing authority.
11 This appointment is for the unexpired term.

12 (c) A local board of health may remove any of its mem-
13 bers pursuant to the provisions of its lawfully adopted
14 bylaws and shall remove any of its members for official
15 misconduct, incompetence, neglect of duty, gross immoral-
16 ity or the revocation of any state professional license or
17 certification. A local board of health, or any of its mem-
18 bers may be removed by the state health officer for failure
19 or refusal to comply with duties as set forth by statute or
20 rule. Upon removal, a successor or successors to the
21 member or members removed shall immediately be
22 appointed by the original appointing body pursuant to the
23 provisions of this article.

24 (d) Each member of a local board of health may receive
25 compensation as determined by the local board for attend-
26 ing meetings of and other activities for the board as
27 required by law: *Provided*, That this compensation may
28 not exceed one hundred dollars per day. Each member of
29 a local board may be reimbursed for all reasonable and
30 necessary travel and other expenses actually incurred by
31 the member in the performance of duties as a member of
32 the local board.

**§16-2-10. Local board of health; meetings; attendance; bylaws;
quorum; chairperson selection, powers and duties.**

1 (a) Each local board of health may meet as often as
2 necessary to orderly and efficiently execute its duties and
3 exercise its powers: *Provided*, That in a service area
4 having a population of less than thirty thousand residents,
5 the board shall meet no fewer than four times per year and
6 in a service area having a population of more than thirty
7 thousand residents, the board shall meet no fewer than six
8 times per year. Members of a local board of health shall
9 attend board meetings in compliance with attendance
10 policies established by its bylaws or rules.

11 (b) Each local board of health is authorized to and shall
12 adopt and may amend bylaws or rules governing the time
13 and place of its regular meetings, procedures and method
14 of conducting its meetings including quorum, meeting
15 attendance policies, requirements for written minutes and
16 board actions as public records, duties and election
17 process for officers, process for filling board vacancies,
18 number, duties, tenure and eligibility of members, and any
19 other matters affecting how the board is organized to
20 perform its duties. A quorum of the board for transacting
21 business is a simple majority of the constituent member-
22 ship of the board.

23 (c) Each local board of health, pursuant to its bylaws,
24 shall elect from its members a chairperson. The chairper-
25 son shall serve for a term of one year and may be reelected
26 for additional terms. The chairperson may, on behalf of
27 the board, sign documents, execute contracts and other-
28 wise act for and in the name of the board in all matters
29 within its lawful powers and as duly authorized by a
30 majority of the board members.

§16-2-11. Local board of health; powers and duties.

1 (a) Each local board of health created, established and
2 operated pursuant to the provisions of this article shall:

3 (1) Provide the following basic public health services
4 and programs in accordance with state public health
5 performance-based standards:

6 (i) Community health promotion including assessing and
7 reporting community health needs to improve health
8 status, facilitating community partnerships including
9 identifying the community's priority health needs, mobili-
10 zation of a community around identified priorities and

11 monitoring the progress of community health education
12 services;

13 (ii) Environmental health protection including the
14 promoting and maintaining of clean and safe air, water,
15 food and facilities and the administering of public health
16 laws as specified by the commissioner as to general
17 sanitation, the sanitation of public drinking water, sewage
18 and wastewater, food and milk, and the sanitation of
19 housing, institutions, and recreation; and

20 (iii) Communicable or reportable disease prevention and
21 control including disease surveillance, case investigation
22 and follow-up, outbreak investigation, response to epi-
23 demics, and prevention and control of rabies, sexually
24 transmitted diseases, vaccine preventable diseases,
25 HIV/AIDS, tuberculosis and other communicable and
26 reportable diseases;

27 (2) Appoint a local health officer to serve at the will and
28 pleasure of the local board of health with approval of the
29 commissioner;

30 (3) Submit a general plan of operation to the commis-
31 sioner for approval, if it receives any state or federal
32 money for health purposes. This program plan shall be
33 submitted annually and comply with provisions of the
34 local board of health standards administrative rule;

35 (4) Provide equipment and facilities for the local health
36 department that are in compliance with federal and state
37 law;

38 (5) Permit the commissioner to act by and through it, as
39 needed. The commissioner may enforce all public health
40 laws of this state, the rules and orders of the secretary, any
41 county commission orders or municipal ordinances of the
42 board's service area relating to public health, and the rules
43 and orders of the local board within the service area of a

44 local board. The commissioner may enforce these laws,
45 rules and orders when, in the opinion of the commissioner,
46 a public health emergency exists or when the local board
47 fails or refuses to enforce public health laws and rules
48 necessary to prevent and control the spread of a communi-
49 cable or reportable disease dangerous to the public health.
50 The expenses incurred shall be charged against the
51 counties or municipalities concerned;

52 (6) Deposit all moneys and collected fees into an account
53 designated for local board of health purposes. The moneys
54 for a municipal board of health shall be deposited with the
55 municipal treasury in the service area. The moneys for a
56 county board of health shall be deposited with the county
57 treasury in the service area. The moneys for a combined
58 local board of health shall be deposited in an account as
59 designated in the plan of combination: *Provided*, That
60 nothing contained in this subsection is intended to conflict
61 with the provisions of article one, chapter sixteen of this
62 code;

63 (7) Submit vouchers or other instruments approved by
64 the board and signed by the local health officer or desig-
65 nated representative to the county or municipal treasurer
66 for payment of necessary and reasonable expenditures
67 from the county or municipal public health funds: *Pro-*
68 *vided*, That a combined local board of health shall draw
69 upon its public health funds account in the manner
70 designated in the plan of combination;

71 (8) Participate in audits, be in compliance with tax
72 procedures required by the state and annually develop a
73 budget for the next fiscal year;

74 (9) Perform public health duties assigned by order of a
75 county commission or by municipal ordinance consistent
76 with state public health laws; and

77 (10) Enforce the public health laws of this state and any
78 other laws of this state applicable to the local board.

79 (b) Each local board of health created, established and
80 operated pursuant to the provisions of this article may:

81 (1) Provide primary care services, clinical and categori-
82 cal programs, and enhanced public health services;

83 (2) Employ or contract with any technical, administra-
84 tive, clerical or other persons, to serve as needed and at the
85 will and pleasure of the local board of health. Staff and
86 any contractors providing services to the board shall
87 comply with applicable West Virginia certification and
88 licensure requirements. Eligible staff employed by the
89 board shall be covered by the rules of the division of
90 personnel under section six, article ten, chapter twenty-
91 nine of this code. However, any local board of health may,
92 in the alternative and with the consent and approval of the
93 appointing authority, establish and adopt a merit system
94 for its eligible employees. The merit system may be
95 similar to the state merit system and may be established
96 by the local board by its order, subject to the approval of
97 the appointing authority, adopting and making applicable
98 to the local health department all, or any portion of any
99 order, rule, standard, or compensation rate in effect in the
100 state merit system as may be desired and as is properly
101 applicable;

102 (3) Adopt and promulgate and from time to time amend
103 rules consistent with state public health laws and the rules
104 of the West Virginia state department of health and human
105 resources, that are necessary and proper for the protection
106 of the general health of the service area and the prevention
107 of the introduction, propagation and spread of disease. All
108 rules shall be filed with the clerk of the county commission
109 or the clerk or the recorder of the municipality or both and

110 shall be kept by the clerk or recording officer in a separate
111 book as public records;

112 (4) Accept, receive and receipt for money or property
113 from any federal, state or local governmental agency, from
114 any other public source or from any private source, to be
115 used for public health purposes or for the establishment or
116 construction of public health facilities;

117 (5) Assess, charge and collect fees for permits and
118 licenses for the provision of public health services:
119 *Provided*, That permits and licenses required for agricul-
120 tural activities may not be assessed, charged or collected:
121 *Provided, however*, That a local board of health may
122 assess, charge and collect all of the expenses of inspection
123 of the physical plant and facilities of any distributor,
124 producer or pasteurizer of milk whose milk distribution,
125 production or pasteurization facilities are located outside
126 this state but who sells or distributes in the state, or
127 transports, causes or permits to be transported into this
128 state, milk or milk products for resale, use or consumption
129 in the state and in the service area of the local board of
130 health. A local board of health may not assess, charge and
131 collect the expenses of inspection if the physical plant and
132 facilities are regularly inspected by another agency of this
133 state or its governmental subdivisions or by an agency of
134 another state or its governmental subdivisions certified as
135 an approved inspection agency by the commissioner. No
136 more than one local board of health may act as the regular
137 inspection agency of the physical plant and facilities;
138 when two or more include an inspection of the physical
139 plant and facilities in a regular schedule, the commissioner
140 shall designate one as the regular inspection agency;

141 (6) Assess, charge and collect fees for services provided
142 by the local health department: *Provided*, That fees for
143 services shall be submitted to and approved by the com-
144 missioner;

145 (7) Contract for payment with any municipality, county
146 or board of education for the provision of local health
147 services or for the use of public health facilities. Any
148 contract shall be in writing and permit provision of
149 services or use of facilities for a period not to exceed one
150 fiscal year. The written contract may include provisions
151 for annual renewal by agreement of the parties; and

152 (8) Retain and make available child safety car seats,
153 collect rental and security deposit fees for the expenses of
154 retaining and making available child safety car seats, and
155 conduct public education activities concerning the use and
156 preventing the misuse of child safety car seats: *Provided,*
157 That this subsection is not intended to conflict with the
158 provisions of section forty-six, article fifteen, chapter
159 seventeen-c of this code: *Provided, however,* That any
160 local board of health offering a child safety car seat
161 program or employee or agent of a local board of health is
162 immune from civil or criminal liability in any action
163 relating to the improper use, malfunction or inadequate
164 maintenance of the child safety car seat and in any action
165 relating to the improper placement, maintenance or
166 securing of a child in a child safety car seat.

167 (c) The local boards of health are charged with protect-
168 ing the health and safety, as well as promoting the inter-
169 ests of the citizens of West Virginia. All state funds
170 appropriated by the Legislature for the benefit of local
171 boards of health shall be used for provision of basic public
172 health services.

**§16-2-12. Local health officer; term of appointment; qualifica-
tions; reappointment; compensation; and removal.**

1 A local board of health shall appoint a full-time or part-
2 time local health officer with approval by the commis-
3 sioner. The local health officer shall be a physician

4 currently licensed in this state and knowledgeable in the
5 science of public health. A local health officer serves at
6 the will and pleasure of the local board for a term of one
7 year and is eligible for reappointment at compensation
8 determined by the local board of health.

9 A local health officer may be removed from office by the
10 commissioner if the local health officer fails or refuses to
11 carry out the lawful orders or rules of the secretary in the
12 event the commissioner determines a public health emer-
13 gency exists or if the local health officer fails or refuses to
14 enforce public health laws and rules necessary to prevent
15 and control the spread of communicable or reportable
16 diseases dangerous to the public health. Upon removal, a
17 successor local health officer shall immediately be ap-
18 pointed by the board pursuant to the provisions of this
19 article.

§16-2-13. Local health officer; powers and duties.

1 (a) A local health officer serves as the executive officer
2 of the local board and under its supervision, a local health
3 officer shall administer the provisions of this article, all
4 other laws of this state and the rules and orders of the
5 secretary of the department relating to public health and
6 applicable to the local board's service area, any county
7 commission orders and municipal ordinances of the
8 board's service area relating to public health and the rules
9 and orders of the local board.

10 (b) A local health officer has the following additional
11 powers and duties which may be delegated with the
12 approval of the board:

13 (1) To attend local board meetings as a nonvoting
14 member. A local health officer serves as secretary at all
15 board meetings and is responsible for maintaining the
16 board's offices, meeting minutes and records;

17 (2) To supervise and direct the activities of the local
18 board's health services, employees and facilities;

19 (3) To insure that procedures are established for the
20 receipt of communicable or reportable disease reports
21 from local physicians and other reporting sources and for
22 the transmittal of the reports to the commissioner;

23 (4) To perform mandatory HIV tests on persons con-
24 victed of sex-related offenses and resident within the
25 service area; and

26 (5) To determine when sufficient corrections have been
27 made to warrant removal of any restrictions or limitations
28 placed on an individual or entity for public health pur-
29 poses by an employee of the local board of health.

**§16-2-14. Financial responsibilities of appointing authorities
for local boards of health; levies; appropriation of
county or municipal general funds for public
health purposes; state funding.**

1 The appointing authorities for local boards of health
2 shall provide financial support for the operation of the
3 local health department. The county commission of any
4 county or the governing body of any municipality in which
5 a local board of health is established pursuant to the
6 provisions of this article, or the county commission of any
7 county or the governing body of any municipality who is
8 a participating member of a combined local board of
9 health may levy a county or municipal tax to provide
10 funds for the local board of health: *Provided*, That the tax
11 may not exceed three cents on each one hundred dollars of
12 assessed valuation of the taxable property in the levying
13 county or municipality, according to the latest assessment.

14 The county commission of any county or the governing
15 body of any municipality in which a local board of health
16 is established pursuant to the provisions of this article, or

17 the county commission of any county or the governing
18 body of any municipality who is a participating member
19 of a combined local board of health may appropriate and
20 spend money from the county or municipal general funds
21 for public health purposes and to pay the expenses of the
22 operation of the local board of health services and facili-
23 ties.

24 The commissioner and the secretary may pay over and
25 contribute to any board of health created and maintained
26 pursuant to the provisions of this article the sum or sums
27 of money that may be available from funds included in
28 appropriations made for the department of health and
29 human resources. The commissioner may withhold all or
30 part of any funds until a local board of health submits an
31 acceptable plan to correct deficiencies in the local board's
32 program plan.

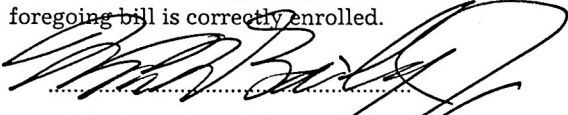
**§16-2-15. Obstructing local health officers and others in the
enforcement of public health laws; other viola-
tions; penalties.**

1 Any person who willfully obstructs any local health
2 officer, public health nurse, sanitarian or any other person
3 charged with the enforcement of any public health law, in
4 the performance of that person's legal duties in enforcing
5 the law, is guilty of a misdemeanor and, upon conviction,
6 shall be punished by a fine of not less than fifty dollars
7 and not more than five hundred dollars.

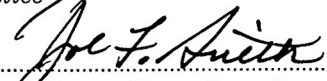
8 Any person who willfully violates any of the provisions
9 of this article, or any of the rules or orders adopted or
10 issued pursuant to the provisions, for which a penalty is
11 not otherwise provided, is guilty of a misdemeanor and,
12 upon conviction, shall be punished by a fine of not less
13 than two hundred dollars and not more than one thousand
14 dollars.

15 Magistrates have concurrent jurisdiction with the circuit
16 courts of this state for violations of provisions of this
17 article.

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



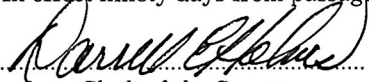
Chairman Senate Committee



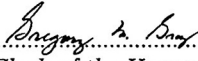
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.



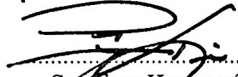
Clerk of the Senate



Clerk of the House of Delegates



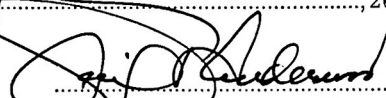
President of the Senate



Speaker House of Delegates

The within... *approved* ... this the *3rd*

Day of... *April* ... 2000



Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/20

Time 12:55pm