

FILED

2005 MAY -3 A 8:59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 2816**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

2005 MAY -3 A 8:59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 2816

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[Passed April 9, 2005, in effect ninety days from passage]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and to amend and reenact §18-2-6a, §18-2-7a and §18-2-9 of said code, all relating to promoting healthy lifestyles; creating a Healthy Lifestyles Office in the Department of Health and Human Resources; establishing the functions of the Office; creating a special revenue account; establishing a voluntary private sector partnership program to encourage healthy lifestyles; establishing physical activity requirements in the schools; using body mass index as an indicator of progress; encouraging the use of healthy beverages in schools; and adding requirements for health education.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-

3, §5-1E-4 and §5-1E-5; and that §18-2-6a, §18-2-7a and §18-2-9 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF  
THE GOVERNOR, SECRETARY OF STATE AND ATTOR-  
NEY GENERAL; BOARD OF PUBLIC WORKS; MISCEL-  
LANEOUS AGENCIES, COMMISSIONS, OFFICES,  
PROGRAMS, ETC.**

**ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.**

**§5-1E-1. Findings and purposes.**

1       The Legislature finds and declares that the rise in obesity  
2 and related weight problems accompanied by the resulting  
3 incidence of chronic disease has created a health care crisis that  
4 burdens the health care infrastructure of the state. The Legisla-  
5 ture also finds that the State of West Virginia must take an  
6 informed, sensitive approach to communicate and educate the  
7 citizens of the state about health issues related to obesity and  
8 inappropriate weight gain. The Legislature further finds that the  
9 state must take action to assist West Virginia citizens in  
10 engaging in healthful eating and regular physical activity. The  
11 Legislature further finds that the state must invest in research  
12 that improves understanding of inappropriate weight gain and  
13 obesity. These efforts are needed to coordinate the state's  
14 interest in improving the health of its citizens and in reducing  
15 the cost of health care. Therefore, it is the purpose of this article  
16 to create, as an integral part of the Department of Health and  
17 Human Resources, an entity to coordinate the efforts of all  
18 agencies to prevent and remedy obesity and related weight  
19 problems and to ensure that all citizens are being educated on  
20 this serious health risk that is affecting the state.

**§5-1E-2. Creation of the Office of Healthy Lifestyles.**

1        There is hereby created the Office of Healthy Lifestyles  
2 within the Department of Health and Human Resources. The  
3 management of this office shall be provided in the manner  
4 determined by the Secretary of the Department of Health and  
5 Human Resources to be in the best interest of the state and its  
6 citizens.

**§5-1E-3. Powers and duties of the Office.**

1        The Office of Healthy Lifestyles shall:

2        (1) Establish a Healthy Lifestyle Coalition to assure  
3 consistency of the public health and private sector approach to  
4 dealing with programs that address the problems that affect  
5 overweight and obese individuals; to provide a forum for  
6 discussing the issues that affect healthy lifestyles and to identify  
7 best practices that can be replicated. By the first day of July,  
8 two thousand five, the Governor shall appoint thirteen members  
9 of the Coalition whose terms shall be for a period of four years,  
10 and the members may be reappointed to a second term. The  
11 terms may be staggered by the Governor to assure continuity of  
12 experience on the coalition. Members shall represent state  
13 agencies, community organizations and other entities which  
14 have an interest and expertise in obesity. Members may not be  
15 compensated but shall receive reimbursement for expenses  
16 incurred while performing the business of the coalition. The  
17 Coalition shall meet monthly for at least the first eighteen  
18 months of the Coalition to develop and implement an action  
19 plan to meet the goals established by the Coalition;

20        (2) Establish a clinical advisory committee to assure a  
21 unified approach using the latest research to assure consistency  
22 in program development;

23        (3) Establish a statewide voluntary private sector partner-  
24 ship and recognition program for employers, merchants,

25 restaurants and other private sector businesses to encourage the  
26 development or further advance current programs that encour-  
27 age healthy lifestyles;

28 (4) Coordinate higher education training programs for  
29 dietary and exercise physiology students with rural health care  
30 providers;

31 (5) Coordinate existing health promotion initiatives to  
32 assure clear, concise and consistent communication;

33 (6) Solicit, accept and expend grants, gifts, bequests,  
34 donations and other funds from any source for programs that  
35 will enable the state to accomplish the goals of this program;

36 (7) Develop a cross-agency series of goals to ensure  
37 consistency throughout the system of providers and agencies  
38 working in the area of improving lifestyles;

39 (8) Establish as a goal to increase the prevalence of healthy  
40 weight among all people in the state because obesity leads to  
41 diabetes, heart disease, strokes and kidney failure. These  
42 diseases, often arising in older age as a result of unhealthy  
43 lifestyles that began during a person's youth, place an undue  
44 financial burden on individuals, the health care industry and  
45 state health care programs;

46 (9) Consider the resources of the local health departments  
47 and recommend ongoing relationships, as appropriate, between  
48 local health departments, family resource networks, faith-based  
49 organizations, cooperative extension services, farm bureaus and  
50 other health care providers;

51 (10) Encourage the development of incentives for participa-  
52 tion in employee wellness programs. Incentives may be based  
53 upon, but should not be limited to, the employee's completion  
54 of health questionnaires or participating in healthy lifestyles

55 initiatives, and may use experiences of successful initiatives  
56 that have occurred in this state. The action plan should include  
57 among its targets, state government employees in this incentive  
58 program;

59 (11) Build upon existing initiatives that focus on any of the  
60 coalition's goals, soliciting input from these initiatives and  
61 eliminating duplication of efforts;

62 (12) Report its progress annually by the first of December  
63 to the Legislative Oversight Commission on Health and Human  
64 Resource Accountability.

**§5-1E-4. Partnership to encourage healthy lifestyles by children and families.**

1 (a) The West Virginia Healthy Lifestyles program will  
2 develop a statewide voluntary private sector partnership  
3 program to work with businesses throughout the State that  
4 encourage and promote healthy lifestyles among their employ-  
5 ees and communities.

6 (b) Beginning the first day of July, two thousand five, those  
7 businesses voluntarily choosing to participate in the Healthy  
8 Lifestyles program shall submit their own detailed programs to  
9 the Office of Healthy Lifestyles for review. The programs  
10 should be creative and unique, highlighting the efforts of the  
11 business to promote healthy lifestyles to West Virginians  
12 through sensible diet and physical fitness.

13 (c) The West Virginia Healthy Lifestyles program will  
14 develop a recognition program for private sector enterprises  
15 that develop or advance programs that address the problems  
16 affecting overweight and obese individuals and that promote a  
17 healthy lifestyle.

18 (d) Any business program promoting healthy lifestyles that  
19 is recognized by the Office of Healthy Lifestyles will be issued  
20 a universally recognized logo, suitable for public display by the  
21 business.

22 (e) Marketing of programs recognized by the Office of  
23 Healthy Lifestyles shall take place through all state agencies.  
24 The West Virginia Public Employees Insurance Agency, the  
25 Bureau for Medical Services and the West Virginia Workers'  
26 Compensation Commission shall aggressively market this  
27 program to their members for the purposes of health promotion  
28 among their members.

29 (f) The Office of Healthy Lifestyles shall market recog-  
30 nized programs to other businesses, as models, to help create  
31 additional programs promoting healthy lifestyles.

32 (g) The Office of Healthy Lifestyles shall report annually  
33 by the first day of December to the Legislative Oversight  
34 Commission on Health and Human Resources Accountability:  
35 (1) The number of participants; (2) the impact on businesses as  
36 established by a survey of participating businesses; and (3) the  
37 results of consumer satisfaction surveys all designed by the  
38 Office of Healthy Lifestyles.

#### **§5-1E-5. Creation of a Healthy Lifestyles Fund.**

1 There is hereby created in the State Treasury a separate  
2 special revenue account, which shall be an interest bearing  
3 account, to be known as the "Healthy Lifestyles Fund". The  
4 special revenue account shall consist of all appropriations made  
5 by the Legislature, income from the investment of moneys held  
6 in the special revenue account and all other sums available for  
7 deposit to the special revenue account from any source, public  
8 or private. No expenditures for purposes of this section are  
9 authorized from collections except in accordance with the

10 provisions of article three, chapter twelve of this code and upon  
11 fulfillment of the provisions set forth in article two, chapter  
12 eleven-b of this code. Any balance remaining in the special  
13 revenue account at the end of any state fiscal year does not  
14 revert to the general revenue fund but remains in the special  
15 revenue account and shall be used solely in a manner consistent  
16 with this article. No expenses incurred under this section shall  
17 be a charge against the general funds of the state.

## CHAPTER 18. EDUCATION.

### ARTICLE 2. STATE BOARD OF EDUCATION.

#### **§18-2-6a. Sale of healthy beverages and soft drinks in schools.**

1 (a) In order to generate funding for necessary programs and  
2 supplies, county boards may permit the sale of healthy beverages  
3 and soft drinks in county schools except during breakfast  
4 and lunch periods as follows:

5 (1) During a school day, soft drinks may not be sold in  
6 areas accessible to students in an elementary school, middle  
7 school or junior high school through vending machines on the  
8 premises, in school stores or in school canteens or through fund  
9 raisers by students, teachers, groups or by any other means. In  
10 elementary, middle school or junior high school, only healthy  
11 beverages may be sold in vending machines on the premises, in  
12 school canteens or through fundraisers by students, teachers,  
13 groups or by any other means. Nothing in this section shall be  
14 construed to prohibit or limit sale or distribution of any food or  
15 beverage item through fund-raising activities of students,  
16 teachers or educational groups when the items are intended for  
17 sale off the school grounds.

18 (2) Those high schools which permit the sale of soft drinks  
19 through vending machines also shall offer for sale healthy  
20 beverages. Of the total beverages offered for sale, at least fifty



21 percent shall be healthy beverages. Vending machines contain-  
22 ing healthy beverages shall be in the same location or substan-  
23 tially similar location as vending machines containing soft  
24 drinks.

25 (3) The sale of healthy beverages and soft drinks shall be in  
26 compliance with the rules of the National School Lunch  
27 Program and the School Breakfast Program of the State Board  
28 and the Nutrition Service of the United States Department of  
29 Agriculture, which became effective on the seventeenth day of  
30 June, one thousand nine hundred eighty-five. Seventy-five  
31 percent of the profits from the sale of healthy beverages and  
32 soft drinks shall be allocated by a majority vote of the faculty  
33 senate of each school and twenty-five percent of the profits  
34 from the sale of healthy beverages and soft drinks shall be  
35 allocated to the purchase of necessary supplies by the principal  
36 of the school.

37 (b) For the purposes of this section:

38 (1) "School day" means the period of time between the  
39 arrival of the first student at the school building and the end of  
40 the last instructional period; and

41 (2) "Healthy beverage" means water, one hundred percent  
42 fruit and vegetable juice, low-fat milk and other juice beverages  
43 with a minimum of twenty percent real juice.

**§18-2-7a. Legislative findings; required physical education;  
program in physical fitness.**

1 (a) The Legislature hereby finds that obesity is a problem  
2 of epidemic proportions in this state. There is increasing  
3 evidence that all segments of the population, beginning with  
4 children, are becoming more sedentary, more overweight, and  
5 more likely to develop health risks and diseases including Type  
6 II Diabetes, high blood cholesterol and high blood pressure. The

7 Legislature further finds that the promotion of physical activity  
8 during the school day for school children is a crucial step in  
9 combating this growing epidemic and in changing the attitudes  
10 and behavior of the residents of this state toward health  
11 promoting physical activity.

12 (b) As a result of these findings, the State Department of  
13 Education shall establish the requirement that each child  
14 enrolled in the public schools of this state actively participates  
15 in physical education classes during the school year to the level  
16 of his or her ability as follows:

17 (1) *Kindergarten to and including grade five.* -- Not less  
18 than thirty minutes of physical education, including physical  
19 exercise and age appropriate physical activities, for not less  
20 than three days a week.

21 (2) *Grade six to and including grade eight.* -- Not less than  
22 one full period of physical education, including physical  
23 exercise and age appropriate physical activities, each school  
24 day of one semester of the school year.

25 (3) *Grade nine to and including grade twelve.* -- Not less  
26 than one full course credit of physical education, including  
27 physical exercise and age appropriate physical activities which  
28 shall be required for graduation and the opportunity to enroll in  
29 an elective lifetime physical education course.

30 (c) Enrollment in physical education classes and activities  
31 required by the provisions of this section shall not exceed, and  
32 shall be consistent with, state guidelines for enrollment in all  
33 other subjects and classes: *Provided*, That schools which do not  
34 currently have the number of certified physical education  
35 teachers or required physical setting may develop alternate  
36 programs that will enable current staff and physical settings to  
37 be used to meet the physical education requirements established  
38 herein. These alternate programs shall be submitted to the State

39 Department of Education and the Healthy Lifestyle Council for  
40 approval. Those schools needing to develop alternate programs  
41 shall not be required to implement this program until the school  
42 year commencing two thousand six.

43 (d) The State Board shall prescribe a program within the  
44 existing health and physical education program which incorpo-  
45 rates fitness testing, reporting, recognition, fitness events and  
46 incentive programs which requires the participation in grades  
47 four through eight and the required high school course. The  
48 program shall be selected from nationally accepted fitness  
49 testing programs designed for school-aged children that test  
50 cardiovascular fitness, muscular strength and endurance,  
51 flexibility and body composition: *Provided*, That nothing in this  
52 subsection shall be construed to prohibit the use of programs  
53 designed under the auspices of the President's Council on  
54 Physical Fitness and Sports. The program shall include modi-  
55 fied tests for exceptional students. Each school in the state shall  
56 participate in National Physical Fitness and Sports Month in  
57 May of each year and shall make every effort to involve the  
58 community it serves in the related events.

59 (e) Body mass index measures shall be used as an indicator  
60 of progress toward promoting healthy lifestyles among school-  
61 aged children. The body mass index measures shall be deter-  
62 mined using student height and weight data and reported to the  
63 State Department of Education via the West Virginia Education  
64 Information System. Body mass index measures shall be  
65 included in kindergarten screening procedures. Students in  
66 grades four through eight and students enrolled in high school  
67 physical education courses shall have their body mass index  
68 measured through required fitness testing procedures. All  
69 school personnel responsible for conducting and reporting body  
70 mass index measures shall receive training or written documen-  
71 tation on the appropriate methodology for assessing the body  
72 mass index and reporting data in a manner that protects student

73 confidentiality. All body mass index data shall be reported in  
74 aggregate to the Governor, the State Board of Education, the  
75 Healthy Lifestyles Coalition and the Legislative Oversight  
76 Commission on Health and Human Resource Accountability.

**§18-2-9. Required courses of instruction; violation and penalty.**

1 (a) In all public, private, parochial and denominational  
2 schools located within this state there shall be given prior to the  
3 completion of the eighth grade at least one year of instruction  
4 in the history of the state of West Virginia. The schools shall  
5 require regular courses of instruction by the completion of the  
6 twelfth grade in the history of the United States, in civics, in the  
7 constitution of the United States, and in the government of the  
8 state of West Virginia for the purpose of teaching, fostering and  
9 perpetuating the ideals, principles and spirit of political and  
10 economic democracy in America and increasing the knowledge  
11 of the organization and machinery of the government of the  
12 United States and of the state of West Virginia. The State Board  
13 shall, with the advice of the State Superintendent, prescribe the  
14 courses of study covering these subjects for the public schools.  
15 It shall be the duty of the officials or boards having authority  
16 over the respective private, parochial and denominational  
17 schools to prescribe courses of study for the schools under their  
18 control and supervision similar to those required for the public  
19 schools. To further such study, every high school student  
20 eligible by age for voter registration shall be afforded the  
21 opportunity to register to vote pursuant to section twenty-two,  
22 article two, chapter three of this code.

23 (b) The State Board shall cause to be taught in all of the  
24 public schools of this state the subject of health education,  
25 including instruction in any of the grades six through twelve as  
26 considered appropriate by the county board, on (1) the preven-  
27 tion, transmission and spread of acquired immune deficiency  
28 syndrome and other sexually transmitted diseases, (2) substance

29 abuse, including the nature of alcoholic drinks and narcotics,  
30 tobacco products, and other potentially harmful drugs, with  
31 special instruction as to their effect upon the human system and  
32 upon society in general and (3) the importance of healthy eating  
33 and physical activity to maintaining healthy weight. The course  
34 curriculum requirements and materials for the instruction shall  
35 be adopted by the State Board by rule in consultation with the  
36 Department of Health and Human Resources. The State Board  
37 shall prescribe a standardized health education assessment to be  
38 administered within health education classes to measure student  
39 health knowledge and program effectiveness.

40 An opportunity shall be afforded to the parent or guardian  
41 of a child subject to instruction in the prevention, transmission  
42 and spread of acquired immune deficiency syndrome and other  
43 sexually transmitted diseases to examine the course curriculum  
44 requirements and materials to be used in the instruction. The  
45 parent or guardian may exempt the child from participation in  
46 the instruction by giving notice to that effect in writing to the  
47 school principal.

48 (c) Any person violating the provisions of this section shall  
49 be guilty of a misdemeanor, and, upon conviction thereof, shall  
50 be fined not exceeding ten dollars for each violation, and each  
51 week during which there is a violation shall constitute a  
52 separate offense. If the person so convicted occupy a position  
53 in connection with the public schools, that person shall auto-  
54 matically be removed from that position and shall be ineligible  
55 for reappointment to that or a similar position for the period of  
56 one year.

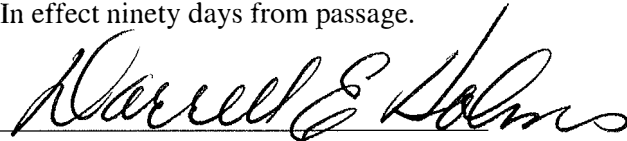
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

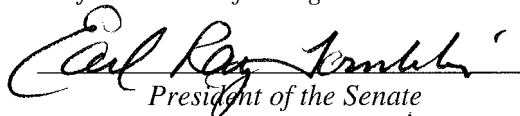
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 2nd  
day of May, 2005.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 10:00 am