

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2961

BY DELEGATES FAST, C. MARTIN, FOSTER, MANDT AND

BUTLER

[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT to amend and reenact §16-1-9 and §16-1-9a of the Code of West Virginia, 1931, as
2 amended, all relating generally to public health and sanitation of water; providing that the
3 Commissioner of the Bureau of Public Health may require a water supply system to be
4 equipped with a backflow prevention assembly in certain circumstances; establishing
5 procedures for determining whether installation of a backflow prevention assembly is
6 required; setting forth the process by which a customer may seek a waiver to backflow
7 prevention assembly requirements and challenge a determination by the commissioner;
8 requiring documentation of certain activities related to backflow prevention assembly; and
9 requiring reporting and communication of boiled water advisories and lifting of advisories
10 by certain means.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

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

1 No person, firm, company, corporation, institution or association, whether public or private,
2 county or municipal, may install or establish any system or method of drainage, water supply, or
3 sewage or excreta disposal without first obtaining a written permit to install or establish the system
4 or method from the commissioner or his or her authorized representative. All systems or methods
5 shall be installed or established in accordance with plans, specifications and instructions issued
6 by the commissioner or which have been approved in writing by the commissioner or his or her
7 authorized representative.

8 Whenever the commissioner or his or her authorized representative finds, upon
9 investigation, that any system or method of drainage, water supply, or sewage or excreta disposal,
10 whether publicly or privately owned, has not been installed in accordance with plans,
11 specifications and instructions issued by the commissioner or approved in writing by the
12 commissioner or his or her authorized representative, the commissioner or his or her authorized

13 representative shall issue an order requiring the owner of the system or method to make
14 alterations necessary to correct the improper condition. The alterations shall be made within a
15 reasonable time, which shall not exceed 30 days, unless a time extension is authorized by the
16 commissioner or his or her authorized representative.

17 The commissioner or his or her designee may determine, upon conducting a risk
18 assessment, that any water supply system must be equipped with a backflow prevention
19 assembly to protect the health and sanitation of water, whether publicly or privately owned:
20 *Provided*, That water supply systems shall not require a backflow prevention assembly unless
21 any of the following are met:

- 22 (i) it cross-connects with a sprinkler or fire suppression system;
- 23 (ii) it cross-connects with an active auxiliary water source or water well;
- 24 (iii) it cross-connects with any fluid storage tank, tub, pool or cistern 85 gallons or larger
25 with a public water inlet that can be below the water level;
- 26 (iv) it cross-connects with a boiler system;
- 27 (v) it cross-connects with any land irrigation system; or
- 28 (vi) the property serviced by the public water supply is a funeral home or mortuary,
29 restaurant, dry cleaner, medical facility, beauty and nail salon, car wash,
30 multi-tenant retail space, commercial building three stories or taller, or commercial
31 space with a dedicated fire service line/sprinkler system, industrial facility, salvage
32 and/or wastewater facility, food processing facility, recycling facility where cross-
33 connected to the public water supply, correctional facility, or any other customer
34 using chemicals harmful to human health that are cross-connected to the public
35 water supply.

36 Prior to requiring installation of a backflow prevention assembly to a water supply system,
37 a risk assessment is required and may be performed based upon the known type of water activity
38 and usage involving the use of the public water supply, by written responses to a written

39 questionnaire presented by the commissioner or his or her designee to the owner or occupier of
40 the water use facility, building or dwelling, or by personal inspection made by the commissioner
41 or his or her designee if the owner or occupier of the premises allows entrance.

42 *Provided however,* That any customer deemed required to install a backflow prevention
43 assembly may appeal the determination and seek a waiver by the water utility, and if not satisfied,
44 may appeal further to the Public Service Commission pursuant to §24-1-1 *et seq.*, §24-2-1 *et*
45 *seq.* and §29A-1-1 *et seq.* of this code: *And provided further,* That the customer shall have the
46 freedom to choose the brand of any required backflow prevention assembly that otherwise meets
47 the required specifications of the commissioner or his or her designee.

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

51 The personnel of the Bureau for Public Health shall be available to consult and advise with
52 any person, firm, company, corporation, institution or association, whether publicly or privately
53 owned, county or municipal, or public service authority, as to the most appropriate design, method
54 of operation or alteration of any system or method.

55 Any person, firm, company, corporation, institution or association, whether public or
56 private, county or municipal, violating any provision of this section is guilty of a misdemeanor and,
57 upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500. Any
58 continuing failure or refusal of the convicted person, firm, company, corporation, institution or
59 association, whether public or private, county or municipal, to make the alterations necessary to
60 protect the public health required by the commissioner or his or her authorized representative is
61 a separate, distinct and additional offense for each 24 hour period of failure or refusal, and, upon
62 conviction thereof, the violator shall be fined not less than \$50 nor more than \$500 for each
63 conviction: *Provided,* That none of the provisions contained in this section apply to those

64 commercial or industrial wastes that are subject to the regulatory control of the West Virginia
65 Department of Environmental Protection.

66 Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of
67 any provisions of this section.

§16-1-9a. Regulation of public water systems.

1 (a) The commissioner shall regulate public water systems as prescribed in this section.

2 (b) The commissioner shall establish by legislative rule, in accordance with §29A-3-1 *et*
3 *seq.* of this code:

4 (1) The maximum contaminant levels to which all public water systems shall conform in
5 order to prevent adverse effects on the health of individuals;

6 (2) Treatment techniques that reduce the contaminant or contaminants to a level which
7 will not adversely affect the health of the consumer;

8 (3) Provisions to protect and prevent contamination of wellheads and well fields used by
9 public water supplies so that contaminants do not reach a level that would adversely affect the
10 health of the consumer;

11 (4) Minimum requirements for:

12 (A) Sampling and testing;

13 (B) System operation;

14 (C) Public notification by a public water system on being granted a variance or exemption
15 or upon failure to comply with specific requirements of this section and regulations promulgated
16 under this section;

17 (D) Recordkeeping;

18 (E) Laboratory certification; and

19 (F) Procedures and conditions for granting variances and exemptions to public water
20 systems from state public water systems' regulations;

21 (5) Requirements covering the production and distribution of bottled drinking water;

22 (6) Requirements governing the taste, odor, appearance and other consumer acceptability
23 parameters of drinking water;

24 (7) Any requirement for any water supply system the commissioner determines is
25 necessary to be equipped with a backflow prevention assembly, all maintenance activities must
26 be documented and provided to the commissioner upon request; and

27 (8) Any other requirement the commissioner finds necessary to effectuate the provisions
28 of this article.

29 (c) The commissioner or his or her authorized representatives or designees may enter any
30 part of a public water system, whether or not the system is in violation of a legal requirement, for
31 the purpose of inspecting, sampling or testing and shall be furnished records or information
32 reasonably required for a complete inspection.

33 (d) The commissioner, his or her authorized representative or designee may conduct an
34 evaluation necessary to assure the public water system meets federal safe drinking water
35 requirements. The public water system shall provide a written response to the commissioner
36 within 30 days of receipt of the evaluation by the public water system, addressing corrective
37 actions to be taken as a result of the evaluation.

38 (e)(1) Any individual or entity who violates any provision of this article, or any of the rules
39 or orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more
40 than \$5,000. Each day's violation shall constitute a separate offense.

41 (2) For a willful violation of a provision of this article, or of any of the rules or orders issued
42 under this article, an individual or entity shall be subject to a civil penalty of not more than \$10,000
43 and each day's violation shall be grounds for a separate penalty.

44 (3) Civil penalties are payable to the commissioner. All moneys collected under this
45 section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All
46 moneys deposited into the fund shall be used by the commissioner to provide technical assistance
47 to public water systems.

48 (f) The commissioner, or his or her authorized representative, may also seek injunctive
49 relief in the circuit court of the county in which all or part of the public water system is located for
50 threatened or continuing violations.

51 (g) By July 1, 2020, a public water system supplying water to the public within the state
52 shall immediately, but in no instance later than six hours, report the occurrence and the lifting of
53 each advisory to local departments of health and to local office of emergency management 911
54 answering point.

55 (h) By July 1, 2021, a public water system shall make available to interested customers
56 boiled water advisories promptly through a text and a voice alert mass notification system.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor