§16-2-1. Purpose.

Local boards of health, created, established and operated pursuant to the provisions of this article, are responsible for directing, supervising and carrying out matters relating to the public health of their respective counties or municipalities. This article provides that local boards of health may be organized as boards of health serving a single municipality, a single county or a combination of any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties. This article establishes uniform provisions applicable to all local boards of health, whatever organizational form is elected, to ensure the consistent performance of duties relating to basic public health services and other health services and the enforcement of the laws of this state pertaining to public health.

§16-2-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article: (a) "Basic public health services" means those services that are necessary to protect the health of the public and that a local board of health must provide. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion, and environmental health protection;

(b) "Bureau" means the Bureau for Public Health in the Department of Health and Human Resources;

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

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

(e) "Commissioner" means the commissioner of the Bureau for Public Health, who is the state health officer; (f) "Communicable and reportable disease prevention and control" is one of three areas of basic public health services each local board of health must offer. Services shall include disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

(g) "Community health promotion" is one of three areas of basic public health services each local board of health must offer. Services shall include assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the
community's priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

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

(i) "Department" means the West Virginia Department of Health and Human Resources;

(j) "Director" or "director of health" means the state health officer. Administratively within the department, the Bureau for Public Health through its commissioner carries out the public health function of the department, unless otherwise assigned by the secretary; (k) "Environmental health protection" is one of three areas of basic public health services each local board of health must offer. Services shall include efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

(l) "Enhanced public health services" means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system, such as lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services are services a local health department may offer; (m) "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

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

(o) "Local health officer" means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner;

(p) "Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

(q) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which a local health department's level of performance can be measured;

(r) "Primary care services" means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;
(s) "Program plan" or "plan of operation" means the annual plan for each local board of health that must be submitted to the commissioner for approval;

(t) "Secretary" means the secretary of the state Department of Health and Human Resources; and

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

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

A county commission shall create, establish and maintain a county board of health if no other local board of health organized under this article is established and responsible for public health in the service area. The county board of health shall be organized pursuant to and with the powers and duties prescribed by this article. The service area of any county board of health is the county territorial limits and includes every municipality within the county that does not have a municipal board of health maintaining a separate full-time municipal health department under the supervision of a municipal local health officer or that is not a member of a combined local board of health.

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

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

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

Any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties may combine to create, establish and maintain a combined local board of health organized pursuant to and with the powers and duties prescribed by this article. The plan of combination must be approved by the commissioner. The service area of any combined local board of health is the combined territorial limits of the participating municipality or municipalities and county or counties: Provided, That if all or a portion of a participating municipality is located in a nonparticipating county, the service area of the combined local board of health is limited to the territorial limits of the municipality and does not extend to or include any area of the nonparticipating county outside of the municipal limits: Provided, however, That the service area of a combined local board does not extend to or include any area within the service area of a municipal board of health maintaining a separate full-time municipal health department under the supervision of a municipal local health officer.

§16-2-6. Appointment to and composition of municipal boards of health; qualifications; number of appointees.
A municipal board of health is composed of five members selected and appointed by vote of the governing body of the municipality. Each member appointed to a municipal board of health shall be a resident of the municipality. No more than two members who reside in the same municipal ward may be appointed and no more than two members may be appointed who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation. No more than three members of a municipal board of health may belong to the same political party.

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

A county board of health is composed of five members selected and appointed by vote of the county commission. Each member appointed to the county board of health shall be a resident of the county. No more than two members who reside in the same magisterial district may be appointed and no more than two members may be appointed who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation. No more than three members of a county board of health may belong to the same political party.

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

A combined local board of health is composed of at least five members. The number of combined local board of health members to be selected by each participating county or municipality shall be established by agreement of the participating counties or municipalities. No more than one half of the members of a combined local board of health may be personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation. The number of members of a combined local board of health belonging to the same political party may not exceed by more than one the number of members belonging to another political party. No member may be selected and appointed by and represent more than one participating county or municipality.

The county commission of each participating county may select and appoint by vote no fewer than one and no more than three persons to serve as the representatives of the county on the combined local board of health. Each member appointed as a county representative to the combined local board of health shall be a resident of the participating county. No more than two persons residing in the same magisterial district may be appointed by a participating county as members and no more than two members may be appointed by a participating county who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation.

The governing body of each participating municipality may select and appoint by vote no fewer than one and no more than three persons to serve as the representatives of the municipality on the combined local board of health. Each member appointed as a municipality's representative to the combined local board of health shall be a resident of the municipality. No more than two members who reside in the same municipal ward may be appointed and no more than two
members may be appointed who are personally licensed or certified in, engaged in, or actively participating in the same business, profession or occupation.

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

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

(a) The term of office for members selected and appointed to a local board of health pursuant to the provisions of this article is five years. Members may serve until their duly qualified successors are selected and appointed by vote of the original appointing authority. Members may be reappointed for additional terms of five years. Board members' oaths of office shall be duly recorded before entering into or discharging any duties of the office.

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

(c) A local board of health may remove any of its members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for official misconduct, incompetence, neglect of duty, gross immorality or the revocation of any state professional license or certification. A local board of health, or any of its members may be removed by the state health officer for failure or refusal to comply with duties as set forth by statute or rule. Upon removal, a successor or successors to the member or members removed shall immediately be appointed by the original appointing body pursuant to the provisions of this article.

(d) Each member of a local board of health may receive compensation as determined by the local board for attending meetings of and other activities for the board as required by law: Provided, That this compensation may not exceed $100 per day. Each member of a local board may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by the member in the performance of duties as a member of the local board.

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

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

(b) Each local board of health is authorized to and shall adopt and may amend bylaws or rules governing the time and place of its regular meetings, procedures and method of conducting its meetings including quorum, meeting attendance policies, requirements for written minutes and
board actions as public records, duties and election process for officers, process for filling board
vacancies, number, duties, tenure and eligibility of members, and any other matters affecting
how the board is organized to perform its duties. A quorum of the board for transacting business
is a simple majority of the constituent membership of the board. (c) Each local board of health,
pursuant to its bylaws, shall elect from its members a chairperson. The chairperson shall serve
for a term of one year and may be reelected for additional terms. The chairperson may, on behalf
of the board, sign documents, execute contracts and otherwise act for and in the name of the
board in all matters within its lawful powers and as duly authorized by a majority of the board
members.

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

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

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

(i) Community health promotion including assessing and reporting community health needs to
improve health status, facilitating community partnerships including identifying the community's
priority health needs, mobilization of a community around identified priorities and monitoring
the progress of community health education services;

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

(iii) Communicable or reportable disease prevention and control including disease surveillance,
case investigation and follow-up, outbreak investigation, response to epidemics, and prevention
and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS,
tuberculosis and other communicable and reportable diseases;

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

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

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

(5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce
all public health laws of this state, the rules and orders of the secretary, any county commission
orders or municipal ordinances of the board's service area relating to public health, and the rules
and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

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

(7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: Provided, That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

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

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

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

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

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under section six, article ten, chapter twenty-nine of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the


local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia State Department of Health and Human Resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation and spread of disease. All rules shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records;

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

(5) Assess, charge and collect fees for permits and licenses for the provision of public health services: Provided, That permits and licenses required for agricultural activities may not be assessed, charged or collected: Provided, however, That a local board of health may assess, charge and collect all of the expenses of inspection of the physical plant and facilities of any distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the physical plant and facilities in a regular schedule, the commissioner shall designate one as the regular inspection agency;

(6) Assess, charge and collect fees for services provided by the local health department: Provided, That fees for services shall be submitted to and approved by the commissioner: Provided, however, That a local health department may bill health care service fees to a payor which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization and the Public Employees Insurance Agency for medical services provided: Provided further, that health care service fees billed by a local health department are not subject to commissioner approval and may be at the payor’s maximum allowable rate.

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

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

(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

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

A local board of health shall appoint a full-time or part-time local health officer with approval by the commissioner. The local health officer shall be a physician currently licensed in this state and knowledgeable in the science of public health. A local health officer serves at the will and pleasure of the local board for a term of one year and is eligible for reappointment at compensation determined by the local board of health.

A local health officer may be removed from office by the commissioner if the local health officer fails or refuses to carry out the lawful orders or rules of the secretary in the event the commissioner determines a public health emergency exists or if the local health officer fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of communicable or reportable diseases dangerous to the public health. Upon removal, a successor local health officer shall immediately be appointed by the board pursuant to the provisions of this article.

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

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

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

(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the board's offices, meeting minutes and records;
(2) To supervise and direct the activities of the local board's health services, employees and facilities;

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

(4) To perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area; and

(5) To determine when sufficient corrections have been made to warrant removal of any restrictions or limitations placed on an individual or entity for public health purposes 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.

The appointing authorities for local boards of health shall provide financial support for the operation of the local health department. The county commission of any county or the governing body of any municipality in which a local board of health is established pursuant to the provisions of this article, or the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may levy a county or municipal tax to provide funds for the local board of health: Provided, That the tax may not exceed 3¢ on each $100 of assessed valuation of the taxable property in the levying county or municipality, according to the latest assessment.

The county commission of any county or the governing body of any municipality in which a local board of health is established pursuant to the provisions of this article, or the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may appropriate and spend money from the county or municipal general funds for public health purposes and to pay the expenses of the operation of the local board of health services and facilities.

The commissioner and the secretary may pay over and contribute to any board of health created and maintained pursuant to the provisions of this article the sum or sums of money that may be available from funds included in appropriations made for the Department of Health and Human Resources. The commissioner may withhold all or part of any funds until a local board of health submits an acceptable plan to correct deficiencies in the local board's program plan.

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

Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that
Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $200 and not more than $1,000.

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

§16-2-16. Food handler examinations and cards.

A food handler permit or card issued pursuant to the procedures put in place by a local county health department shall be valid for at least one year but not longer than three years. The permit or card shall be valid in all counties of this state, if the applicant pays an additional fee not to exceed $10. If required, a permit or card shall be obtained within thirty days of a person being hired in a restaurant or other applicable food establishment. The Bureau for Public Health shall develop minimum guidelines for training programs for individuals seeking a food handler permit or card that may be adopted by local county health departments. In lieu of state guidelines a local health department may use training courses developed by the American National Standards Institute or other nationally recognized entities for food safety training.

§16-2-17. Event permit fees good for a year, reciprocity from other state health departments.

(a) A temporary food service permit issued by a local or county health department to an in-state vendor in their county of residence for preparing and selling non-potentially hazardous foods at a festival, scheduled event, or similar activity which is valid for any time period less than annual and any permit fee paid shall be valid for an entire calendar year for the vendor regardless of the length of time for which the first permit is issued and regardless of the number of subsequent festivals, events or activities for which the vendor requires the same permit. Non-potentially hazardous foods mean food that does not require time or temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) The permit shall also be valid in the counties that border the vendor’s county of residence or 25 air miles, whichever is greater. No health department within these defined areas may charge a permit fee to any in-state vendor that has received a temporary food service permit to prepare and sell non-potentially hazardous foods by the other in-state health department during the same calendar year for the same type of activity, but may place conditions and limitations upon an issued permit to assure compliance with that health departments rules and standards for the type of permit being issued. Each vendor must provide notice to the local health department with jurisdiction at least 14 days prior to the start of the festival, event or activity. The permit must be visibly posted at the festival, event, or activity or the permit is not valid.
(c) The Secretary shall review and modernize legislative rules regarding local boards of health fees located in 64 CSR 30 in the next filing period.