

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 155**

4 (By Senator Snyder)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 13, 2014.]

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10
11 A BILL to amend and reenact article 5, chapter 64 of the Code of
12 West Virginia, 1931, as amended, relating generally to the
13 promulgation of administrative rules by the Department of
14 Health and Human Resources; legislative mandate or
15 authorization for the promulgation of certain legislative
16 rules by various executive or administrative agencies of the
17 state; authorizing certain of the agencies to promulgate
18 certain legislative rules in the form that the rules were
19 filed in the State Register; authorizing certain of the
20 agencies to promulgate certain legislative rules with various
21 modifications presented to and recommended by the Legislative
22 Rule-Making Review Committee; authorizing certain of the
23 agencies to promulgate certain legislative rules with various
24 modifications presented to and recommended by the Legislative

1 Rule-Making Review Committee and as amended by the
2 Legislature; authorizing the Department of Health and Human
3 Resources to promulgate a legislative rule relating to
4 medication administration by unlicensed personnel; authorizing
5 the Department of Health and Human Resources to promulgate a
6 legislative rule relating to child care centers' licensing;
7 authorizing the Department of Health and Human Resources to
8 promulgate a legislative rule relating to clinical laboratory
9 technician and technologist licensure and certification;
10 authorizing the Department of Health and Human Resources to
11 promulgate a legislative rule relating to AIDS-related medical
12 testing and confidentiality; authorizing the Department of
13 Health and Human Resources to promulgate a legislative rule
14 relating to the Cancer Registry; authorizing the Department of
15 Health and Human Resources to promulgate a legislative rule
16 relating to the Medical Examiner's rule for post-mortem
17 inquiries; authorizing the Health Care Authority to promulgate
18 a legislative rule relating to the West Virginia Health
19 Information Network; authorizing the Bureau for Child Support
20 Enforcement to promulgate a legislative rule relating to the
21 bureau; repealing the Bureau for Child Support Enforcement's
22 legislative rule relating to obtaining support from federal
23 and state tax refunds; repealing the Bureau for Child Support
24 Enforcement's legislative rule relating to interstate income

1 withholding; authorizing the Bureau for Child Support
2 Enforcement to promulgate a legislative rule relating to
3 support enforcement activities undertaken by the bureau; and
4 authorizing the Bureau for Child Support Enforcement to
5 promulgate a legislative rule relating to the distribution of
6 support payments.

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

8 That article 5, chapter 64 of the Code of West Virginia, 1931,
9 as amended, be amended and reenacted to read as follows:

10 **§64-5-1. Department of Health and Human Resources.**

11 (a) The legislative rule filed in the State Register on July
12 29, 2013, authorized under the authority of section eleven, article
13 five-o, chapter sixteen of this code, modified by the Department of
14 Health and Human Resources to meet the objections of the
15 Legislative Rule-Making Review Committee and refiled in the State
16 Register on November 8, 2013, relating to the Department of Health
17 and Human Resources (medication administration by unlicensed
18 personnel, 64 CSR 60), is authorized with the following amendment:

19 On page four, paragraph 2.13.a.4 after the word "appliances"
20 by changing the semicolon to a period striking out the word "and".

21 (b) The legislative rule filed in the State Register on July
22 29, 2013, authorized under the authority of section four, article
23 two-b, chapter forty-nine of this code, modified by the Department
24 of Health and Human Resources to meet the objections of the

1 Legislative Rule-Making Review Committee and refiled in the State
2 Register on December 3, 2013, relating to the Department of Health
3 and Human Resources (child care centers' licensing, 78 CSR 1), is
4 authorized.

5 **§64-5-2. Bureau for Public Health.**

6 (a) The legislative rule filed in the State Register on July
7 24, 2013, authorized under the authority of section four, article
8 one, chapter sixteen of this code, modified by the Department of
9 Health and Human Resources to meet the objections of the
10 Legislative Rule-Making Review Committee and refiled in the State
11 Register on November 5, 2013, relating to the Department of Health
12 and Human Resources (clinical laboratory technician and
13 technologist licensure and certification, 64 CSR 57), is
14 authorized.

15 (b) The legislative rule filed in the State Register on July
16 25, 2013, authorized under the authority of section four, article
17 one, chapter sixteen of this code, modified by the Department of
18 Health and Human Resources to meet the objections of the
19 Legislative Rule-Making Review Committee and refiled in the State
20 Register on December 9, 2013, relating to the Department of Health
21 and Human Resources (AIDS-related medical testing and
22 confidentiality, 64 CSR 64), is authorized with the following
23 amendments:

24 On page six, paragraph 4.3.b.1., by striking out the words "an

1 oral" and inserting in lieu thereof the word "a";

2 On page six, by striking out all of subparagraph 4.3.b.1.A.
3 and inserting in lieu thereof the following:

4 4.3.b.1.A. The court shall require the defendant or juvenile
5 respondent to submit to the testing not later than forty-eight
6 hours after the issuance of the order described in paragraph
7 4.3.b.1 of this subsection, unless good cause for delay is shown
8 upon a request for a hearing: *Provided*, That no such delay shall
9 cause the HIV-related testing to be administered later than forty-
10 eight hours after the filing of any indictment or information
11 regarding an adult defendant or the filing of a petition regarding
12 a juvenile respondent.

13 4.3.b.1.B. The prosecuting attorney may, upon the request of
14 the victim or the victim's parent or legal guardian, and with
15 notice to the defendant or juvenile respondent, apply to the court
16 for an order directing that an appropriate human immunodeficiency
17 virus (HIV) test or other STD test be performed on a defendant
18 charged with or a juvenile subject to a petition involving the
19 offenses of prostitution, sexual abuse, sexual assault or incest.

20 On page six, by striking out all of part 4.3.b.1.A.1.;

21 On page six, by striking out all of paragraph 4.3.b.2.;

22 And renumbering the remaining paragraphs;

23 On page six, by striking out all of paragraph 4.3.b.6. and
24 inserting in lieu thereof the following:

1 4.3.b.5. The costs of testing may be charged to the defendant
2 or juvenile respondent, or to that person's medical insurance
3 provider, unless determined unable to pay by the court having
4 jurisdiction over the matter. If the defendant or juvenile is
5 unable to pay, the cost of laboratory testing for HIV testing may
6 be borne by the bureau or the local health department.

7 4.3.b.5.A. The commissioner designates and authorizes all
8 health care providers operating in regional jails, correctional or
9 juvenile facilities to administer HIV tests, either by taking blood
10 or oral specimens, and transmitting those specimens to the Office
11 of Laboratory Services in accordance with instructions set forth
12 at: <http://www.wvdhhr.org/labservices/labe/HIV/index.cfm>.

13 4.3.b.5.B. Laboratory testing done on specimens sent to the
14 Office of Laboratory Services by health care providers for regional
15 jails, correctional or juvenile facilities shall be performed at no
16 cost to the jails, facilities or health care providers.;

17 And,

18 On page seven, by striking out all of subdivision 4.3.d. and
19 inserting in lieu thereof a new subdivision, designated subdivision
20 4.3.d., to read as follows:

21 4.3.d. A person convicted or a juvenile adjudicated of the
22 offenses described in this subsection may be required to undergo
23 HIV-related testing and counseling immediately upon conviction or
24 adjudication: *Provided,* That if the person convicted or

1 adjudicated has been tested in accordance with the provisions of
2 subdivision 4.3.b. of this subsection, that person need not be
3 retested.

4 (c) The legislative rule filed in the State Register on July
5 24, 2013, authorized under the authority of section two-a, article
6 five-a, chapter sixteen of this code, modified by the Department of
7 Health and Human Resources to meet the objections of the
8 Legislative Rule-Making Review Committee and refiled in the State
9 Register on October 7, 2013, relating to the Department of Health
10 and Human Resources (Cancer Registry, 64 CSR 68), is authorized.

11 (d) The legislative rule filed in the State Register on July
12 24, 2013, authorized under the authority of section three, article
13 twelve, chapter sixty-one of this code, modified by the Department
14 of Health and Human Resources to meet the objections of the
15 Legislative Rule-Making Review Committee and refiled in the State
16 Register on November 5, 2013, relating to the Department of Health
17 and Human Resources (Medical Examiner rule for postmortem
18 inquiries, 64 CSR 84), is authorized.

19 **§64-5-3. Health Care Authority.**

20 The legislative rule filed in the State Register on July 26,
21 2013, authorized under the authority of section seven, article
22 twenty-nine-g, chapter sixteen of this code, modified by the Health
23 Care Authority to meet the objections of the Legislative Rule-
24 Making Review Committee and refiled in the State Register on

1 September 4, 2013, relating to the Health Care Authority (West
2 Virginia Health Information Network, 65 CSR 28), is authorized.

3 **§64-5-4. Bureau for Child Support Enforcement.**

4 (a) The legislative rule filed in the State Register on July
5 29, 2013, authorized under the authority of section one hundred
6 five, article eighteen, chapter forty-eight of this code, modified
7 by the Bureau for Child Support Enforcement to meet the objections
8 of the Legislative Rule-Making Review Committee and refiled in the
9 State Register on December 18, 2013, relating to the Bureau for
10 Child Support Enforcement (the Bureau for Child Support
11 Enforcement, 97 CSR 1), is authorized.

12 (b) The legislative rule filed in the State Register on July
13 29, 2013, authorized under the authority of section one hundred
14 five, article eighteen, chapter forty-eight of this code, relating
15 to the Bureau for Child Support Enforcement (obtaining support from
16 federal and state tax refunds, 97 CSR 3), is repealed.

17 (c) The legislative rule filed in the State Register on July
18 29, 2013, authorized under the authority of section one hundred
19 five, article eighteen, chapter forty-eight of this code, relating
20 to the Bureau for Child Support Enforcement (interstate income
21 withholding, 97 CSR 4), is repealed.

22 (d) The legislative rule filed in the State Register on July
23 29, 2013, authorized under the authority of section one hundred
24 five, article eighteen, chapter forty-eight of this code, modified

1 by the Bureau for Child Support Enforcement to meet the objections
2 of the Legislative Rule-Making Review Committee and refiled in the
3 State Register on December 18, 2013, relating to the Bureau for
4 Child Support Enforcement (support enforcement activities
5 undertaken by the Bureau for Child Support Enforcement, 97 CSR 6),
6 is authorized.

7 (e) The legislative rule filed in the State Register on July
8 29, 2013, authorized under the authority of section one hundred
9 five, article eighteen, chapter forty-eight of this code, modified
10 by the Bureau for Child Support Enforcement to meet the objections
11 of the Legislative Rule-Making Review Committee and refiled in the
12 State Register on December 18, 2013, relating to the Bureau for
13 Child Support Enforcement (distribution of support payments, 97 CSR
14 7), is authorized.