

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 155

(By Senator Snyder)

[Originating in the Committee on the Judiciary;
reported February 13, 2014.]

A BILL to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to

and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication administration by unlicensed personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care centers' licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Cancer Registry; authorizing the Department of Health and Human Resources to

promulgate a legislative rule relating to the Medical Examiner's rule for postmortem inquiries; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to the bureau; repealing the Bureau for Child Support Enforcement's legislative rule relating to obtaining support from federal and state tax refunds; repealing the Bureau for Child Support Enforcement's legislative rule relating to interstate income withholding; authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to support enforcement activities undertaken by the bureau; and authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to the distribution of support payments.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) The legislative rule filed in the State Register on July
2 29, 2013, authorized under the authority of section eleven,
3 article five-o, chapter sixteen of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on November 8,
7 2013, relating to the Department of Health and Human
8 Resources (medication administration by unlicensed
9 personnel, 64 CSR 60), is authorized with the following
10 amendment:

11 On page four, paragraph 2.13.a.4 after the word
12 “appliances” by changing the semicolon to a period striking
13 out the word “and”.

14 (b) The legislative rule filed in the State Register on July
15 29, 2013, authorized under the authority of section four,
16 article two-b, chapter forty-nine of this code, modified by the
17 Department of Health and Human Resources to meet the
18 objections of the Legislative Rule-Making Review

19 Committee and refiled in the State Register on December 3,
20 2013, relating to the Department of Health and Human
21 Resources (child care centers licensing, 78 CSR 1), is
22 authorized.

§64-5-2. Bureau for Public Health.

1 (a) The legislative rule filed in the State Register on July
2 24, 2013, authorized under the authority of section four,
3 article one, chapter sixteen of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on November 5,
7 2013, relating to the Department of Health and Human
8 Resources (clinical laboratory technician and technologist
9 licensure and certification, 64 CSR 57), is authorized.

10 (b) The legislative rule filed in the State Register on July
11 25, 2013, authorized under the authority of section four,
12 article one, chapter sixteen of this code, modified by the
13 Department of Health and Human Resources to meet the
14 objections of the Legislative Rule-Making Review

15 Committee and refiled in the State Register on December 9,
16 2013, relating to the Department of Health and Human
17 Resources (AIDS-related medical testing and confidentiality,
18 64 CSR 64), is authorized with the following amendments:

19 On page six, paragraph 4.3.b.1., by striking out the words
20 “an oral” and inserting in lieu thereof the word “a”;

21 On page six, by striking out all of subparagraph
22 4.3.b.1.A. and inserting in lieu thereof the following:

23 4.3.b.1.A. The court shall require the defendant or
24 juvenile respondent to submit to the testing not later than
25 forty-eight hours after the issuance of the order described in
26 paragraph 4.3.b.1 of this subsection, unless good cause for
27 delay is shown upon a request for a hearing: *Provided*, That
28 no such delay shall cause the HIV-related testing to be
29 administered later than forty-eight hours after the filing of
30 any indictment or information regarding an adult defendant
31 or the filing of a petition regarding a juvenile respondent.

32 4.3.b.1.B. The prosecuting attorney may, upon the
33 request of the victim or the victim’s parent or legal guardian,

34 and with notice to the defendant or juvenile respondent,
35 apply to the court for an order directing that an appropriate
36 human immunodeficiency virus (HIV) test or other STD test
37 be performed on a defendant charged with or a juvenile
38 subject to a petition involving the offenses of prostitution,
39 sexual abuse, sexual assault or incest.

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

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

42 And renumbering the remaining paragraphs;

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

45 4.3.b.5. The costs of testing may be charged to the
46 defendant or juvenile respondent, or to that person's medical
47 insurance provider, unless determined unable to pay by the
48 court having jurisdiction over the matter. If the defendant or
49 juvenile is unable to pay, the cost of laboratory testing for
50 HIV testing may be borne by the bureau or the local health
51 department.

52 4.3.b.5.A. The commissioner designates and authorizes
53 all health care providers operating in regional jails,
54 correctional or juvenile facilities to administer HIV tests,
55 either by taking blood or oral specimens, and transmitting
56 those specimens to the Office of Laboratory Services in
57 accordance with instructions set forth at:
58 <http://www.wvdhhr.org/labservices/labe/HIV/index.cfm>.

59 4.3.b.5.B. Laboratory testing done on specimens sent to
60 the Office of Laboratory Services by health care providers for
61 regional jails, correctional or juvenile facilities shall be
62 performed at no cost to the jails, facilities or health care
63 providers.;

64 And,

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

68 4.3.d. A person convicted or a juvenile adjudicated of the
69 offenses described in this subsection may be required to
70 undergo HIV-related testing and counseling immediately

71 upon conviction or adjudication: *Provided*, That if the
72 person convicted or adjudicated has been tested in
73 accordance with the provisions of subdivision 4.3.b. of this
74 subsection, that person need not be retested.

75 (c) The legislative rule filed in the State Register on July
76 24, 2013, authorized under the authority of section two-a,
77 article five-a, chapter sixteen of this code, modified by the
78 Department of Health and Human Resources to meet the
79 objections of the Legislative Rule-Making Review
80 Committee and refiled in the State Register on October 7,
81 2013, relating to the Department of Health and Human
82 Resources (Cancer Registry, 64 CSR 68), is authorized.

83 (d) The legislative rule filed in the State Register on July
84 24, 2013, authorized under the authority of section three,
85 article twelve, chapter sixty-one of this code, modified by the
86 Department of Health and Human Resources to meet the
87 objections of the Legislative Rule-Making Review
88 Committee and refiled in the State Register on November 5,
89 2013, relating to the Department of Health and Human

90 Resources (Medical Examiner rule for postmortem inquiries,
91 64 CSR 84), is authorized.

§64-5-3. Health Care Authority.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section seven, article
3 twenty-nine-g, chapter sixteen of this code, modified by the
4 Health Care Authority to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on September 4, 2013, relating to the
7 Health Care Authority (West Virginia Health Information
8 Network, 65 CSR 28), is authorized.

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

1 (a) The legislative rule filed in the State Register on July
2 29, 2013, authorized under the authority of section one
3 hundred five, article eighteen, chapter forty-eight of this
4 code, modified by the Bureau for Child Support Enforcement
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on
7 December 18, 2013, relating to the Bureau for Child Support

8 Enforcement (the Bureau for Child Support Enforcement, 97
9 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on July
11 29, 2013, authorized under the authority of section one
12 hundred five, article eighteen, chapter forty-eight of this
13 code, relating to the Bureau for Child Support Enforcement
14 (obtaining support from federal and state tax refunds, 97 CSR
15 3), is repealed.

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

21 (d) The legislative rule filed in the State Register on July
22 29, 2013, authorized under the authority of section one
23 hundred five, article eighteen, chapter forty-eight of this
24 code, modified by the Bureau for Child Support Enforcement
25 to meet the objections of the Legislative Rule-Making
26 Review Committee and refiled in the State Register on

27 December 18, 2013, relating to the Bureau for Child Support
28 Enforcement (support enforcement activities undertaken by
29 the Bureau for Child Support Enforcement, 97 CSR 6), is
30 authorized.

31 (e) The legislative rule filed in the State Register on July
32 29, 2013, authorized under the authority of section one
33 hundred five, article eighteen, chapter forty-eight of this
34 code, modified by the Bureau for Child Support Enforcement
35 to meet the objections of the Legislative Rule-Making
36 Review Committee and refiled in the State Register on
37 December 18, 2013, relating to the Bureau for Child Support
38 Enforcement (distribution of support payments, 97 CSR 7),
39 is authorized.