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ENGROSSED  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 245**  
(By Senator Minard)

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[Originating in the Committee on the Judiciary;  
reported February 10, 2012.]

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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 in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various

1 modifications presented to and recommended by the Legislative  
2 Rule-Making Review Committee; authorizing certain of the  
3 agencies to promulgate certain legislative rules with various  
4 modifications presented to and recommended by the Legislative  
5 Rule-Making Review Committee and as amended by the  
6 Legislature; authorizing the Department of Health and Human  
7 Resources to promulgate a legislative rule relating to  
8 credentialing verification organizations; authorizing the  
9 Department of Health and Human Resources to promulgate a  
10 legislative rule relating to a safety and treatment program;  
11 authorizing the Secretary of the Department of Health and  
12 Human Resources, the Insurance Commissioner and the Chair of  
13 the West Virginia Health Care Authority to promulgate a  
14 legislative rule relating to an all-payer claims database --  
15 data submission requirements; authorizing the Secretary of the  
16 Department of Health and Human Resources, the Insurance  
17 Commissioner and the Chair of the West Virginia Health Care  
18 Authority to promulgate a legislative rule relating to the  
19 all-payer claims database program's privacy and security;  
20 authorizing the Department of Health and Human Resources to  
21 promulgate a legislative rule relating to public water  
22 systems; authorizing the Department of Health and Human  
23 Resources to promulgate a legislative rule relating to public  
24 water systems operators; authorizing the Department of Health  
25 and Human Resources to promulgate a legislative rule relating

1 to wastewater systems and operations; authorizing the  
2 Department of Health and Human Resources to promulgate a  
3 legislative rule relating to vital statistics; authorizing the  
4 Department of Health and Human Resources to promulgate a  
5 legislative rule relating to manufactured home communities;  
6 authorizing the Department of Health and Human Resources to  
7 promulgate a legislative rule relating to AIDS-related medical  
8 testing and confidentiality; authorizing the Department of  
9 Health and Human Resources to promulgate a legislative rule  
10 relating to public water systems design standards; authorizing  
11 the Division of Human Services to promulgate a legislative  
12 rule relating to family child care facility licensing  
13 requirements; authorizing the Division of Human Services to  
14 promulgate a legislative rule relating to family child care  
15 home registration requirements; authorizing the Division of  
16 Human Services to promulgate a legislative rule relating to a  
17 child care quality rating and improvement system; authorizing  
18 the Commission for the Deaf and Hard of Hearing to promulgate  
19 a legislative rule relating to fees for qualified  
20 interpreters; and authorizing the Commission for the Deaf and  
21 Hard of Hearing to promulgate a legislative rule relating to  
22 the establishment of required qualifications and ethical  
23 standards for interpreters and transliterators.

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

25 That article 5, chapter 64 of the Code of West Virginia, 1931,

1 as amended, be amended and reenacted to read as follows:

2 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**  
3 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

4 **§64-5-1. Department of Health and Human Resources.**

5 (a) The legislative rule filed in the State Register on July  
6 28, 2011, authorized under the authority of section three, article  
7 two, chapter thirty-three of this code, modified by the Department  
8 of Health and Human Resources to meet the objections of the  
9 Legislative Rule-Making Review Committee and refiled in the State  
10 Register on December 9, 2011, relating to the Department of Health  
11 and Human Resources (credentialing verification organizations, 64  
12 CSR 89B), is authorized.

13 (b) The legislative rule filed in the State Register on July  
14 29, 2011, authorized under the authority of section three, article  
15 five-a, chapter seventeen-c of this code, modified by the  
16 Department of Health and Human Resources to meet the objections of  
17 the Legislative Rule-Making Review Committee and refiled in the  
18 State Register on December 14, 2011, relating to the Department of  
19 Health and Human Resources (safety and treatment program, 64 CSR  
20 98), is authorized.

21 (c) The legislative rule filed in the State Register on July  
22 28, 2011, authorized under the authority of section three, article  
23 two, chapter thirty-three of this code, modified by the Secretary  
24 of the Department of Health and Human Resources, the Insurance  
25 Commissioner and the Chair of the West Virginia Health Care

1 Authority to meet the objections of the Legislative Rule-Making  
2 Review Committee and refiled in the State Register on October 21,  
3 2011, relating to the Secretary of the Department of Health and  
4 Human Resources, the Insurance Commissioner and the Chair of the  
5 West Virginia Health Care Authority (all-payer claims database --  
6 data submission requirements, 114A CSR 1), is authorized with the  
7 following amendments:

8 On page four, subsection 3.2., by striking out "OIC" and  
9 inserting in lieu thereof the words "Offices of the Insurance  
10 Commissioner";

11 On page four, subdivision 3.2.a., by striking out "OIC" and  
12 inserting in lieu thereof the words "Offices of the Insurance  
13 Commissioner";

14 And,

15 On page seven, by striking out all of subdivision 7.1.e. and  
16 inserting in lieu thereof a new subdivision 7.1.e., to read as  
17 follows:

18 7.1.e. The Director of the Public Employees Insurance Agency  
19 or his or her designee, the Commissioner of the Bureau for Medical  
20 Services or his or her designee and the Director of the Children's  
21 Health Insurance Program or his or her designee.

22 (d) The legislative rule filed in the State Register on July  
23 28, 2011, authorized under the authority of section three, article  
24 two, chapter thirty-three of this code, relating to the Secretary  
25 of the Department of Health and Human Resources, the Insurance

1 Commissioner and the Chair of the West Virginia Health Care  
2 Authority (all-payer claims database program's privacy and  
3 security, 114A CSR 2), is authorized.

4 **§64-5-2. Bureau for Public Health.**

5 (a) The legislative rule filed in the State Register on July  
6 29, 2011, authorized under the authority of section four, article  
7 one, chapter sixteen of this code, modified by the Department of  
8 Health and Human Resources to meet the objections of the  
9 Legislative Rule-Making Review Committee and refiled in the State  
10 Register on December 1, 2011, relating to the Department of Health  
11 and Human Resources (public water systems, 64 CSR 3), is  
12 authorized.

13 (b) The legislative rule filed in the State Register on July  
14 29, 2011, authorized under the authority of section four, article  
15 one, chapter sixteen of this code, modified by the Department of  
16 Health and Human Resources to meet the objections of the  
17 Legislative Rule-Making Review Committee and refiled in the State  
18 Register on December 30, 2011, relating to the Department of Health  
19 and Human Resources (public water systems operators, 64 CSR 4), is  
20 authorized with the following amendments:

21 On page three, subsection 3.23., after the words "Water  
22 Distribution" by inserting the word "System";

23 And,

24 On page six, subdivision 5.5.c., by striking out the word  
25 "subsection" and inserting in lieu thereof the word "subdivision".

1 (c) The legislative rule filed in the State Register on July  
2 29, 2011, authorized under the authority of section four, article  
3 one, chapter sixteen of this code, modified by the Department of  
4 Health and Human Resources to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in the State  
6 Register on December 30, 2011, relating to the Department of Health  
7 and Human Resources (wastewater systems and operations, 64 CSR 5),  
8 is authorized with the following amendments:

9 On page three, subsection 3.26., by striking out the words  
10 "West Virginia Department of Environmental Protection (WVDEP)" and  
11 inserting in lieu thereof "WV DEP";

12 On page four, subdivision 4.1.e., by striking out the word  
13 "Extended" and inserting in lieu thereof the words "This class  
14 includes extended";

15 On page five, by striking out "5.4.a.2." and inserting in lieu  
16 thereof "5.4.a.1.A.";

17 On page five, by striking out "5.4.a.3." and inserting in lieu  
18 thereof "5.4.a.1.B.";

19 On page seven, subsection 6.2., after the words "based on" by  
20 inserting the words "his or her";

21 On page nine, subdivision 7.7.a., by striking out the word  
22 "requirement" and inserting in lieu thereof the word  
23 "requirements";

24 On page ten, subsection 10.1., by striking out the word  
25 "applications" and inserting in lieu thereof the word

1 "application";

2 On page ten, subsection 10.4., by striking out the word  
3 "Applicant" and inserting in lieu thereof the words "An applicant";

4 On page eleven, subdivision 12.1.d., after the word "one" by  
5 inserting "(1)";

6 On page twelve, subdivision 12.1.g., after the word "three" by  
7 inserting "(3)";

8 And,

9 On page twelve, subdivision 12.1.h., after the words "with  
10 this rule," by inserting the word "an".

11 (d) The legislative rule filed in the State Register on July  
12 29, 2011, authorized under the authority of section three, article  
13 five, 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 December 1, 2011, relating to the Department of Health  
17 and Human Resources (vital statistics, 64 CSR 32), is authorized.

18 (e) The legislative rule filed in the State Register on July  
19 29, 2011, authorized under the authority of section four, article  
20 one, chapter sixteen of this code, modified by the Department of  
21 Health and Human Resources to meet the objections of the  
22 Legislative Rule-Making Review Committee and refiled in the State  
23 Register on December 1, 2011, relating to the Department of Health  
24 and Human Resources (manufactured home communities, 64 CSR 40), is  
25 authorized with the following amendments:



1           On page four, by striking out all of subdivision 5.1.5. and  
2 inserting in lieu thereof a new subdivision 5.1.5., to read as  
3 follows:

4           5.1.5. The Commissioner shall deny a permit if the information  
5 on the application form, plans or specifications is incomplete,  
6 inaccurate, false or misleading, or indicates that the application  
7 provisions of this rule cannot be met. A permit to construct shall  
8 be issued or denied within forty-five (45) days of receipt of the  
9 completed application. Reasons for denial shall be in writing.;

10           And,

11           On page four, by striking out all of paragraph 5.1.5.a.

12           (f) The legislative rule filed in the State Register on July  
13 29, 2011, authorized under the authority of section four, article  
14 one, chapter sixteen of this code, modified by the Department of  
15 Health and Human Resources to meet the objections of the  
16 Legislative Rule-Making Review Committee and refiled in the State  
17 Register on December 1, 2011, relating to the Department of Health  
18 and Human Resources (AIDS-related medical testing and  
19 confidentiality, 64 CSR 64), is authorized with the following  
20 amendments:

21           On page four, by striking out all of paragraph 4.1.d.4. and  
22 inserting in lieu thereof a new paragraph 4.1.d.4., to read as  
23 follows:

24           4.1.d.4. It is recommended that health care providers test  
25 women as early as possible during each pregnancy. Women who decline

1 the test early in prenatal care may be encouraged to be tested at  
2 subsequent visits.;

3 On page five, by striking out all of subdivision 4.2.c. and  
4 inserting in lieu thereof a new subdivision 4.2.c. to read as  
5 follows:

6 4.2.c. If the pregnant woman's HIV status is unknown at the  
7 time she presents for delivery, an HIV test shall be offered and if  
8 she refuses the test, the infant may be tested and the mother shall  
9 be informed of the testing and the results.;

10 On page six, by striking out all of paragraph 4.2.c.1.;

11 On page six, by striking out all of paragraph 4.2.c.2;

12 On page six, by striking out "4.2.c.3." and inserting in lieu  
13 thereof "4.2.c.1.";

14 On page six, by striking out "4.2.c.4." and inserting in lieu  
15 thereof "4.2.c.2.";

16 On page six, by striking out all of paragraph 4.3.b.1. and  
17 inserting in lieu thereof a new paragraph 4.3.b.1, to read as  
18 follows:

19 4.3.b.1. Upon his or her initial appearance for an offense set  
20 forth in subdivision two, subsection f, section two, article three-  
21 c, chapter sixteen of this code, the courts shall order the  
22 defendant to undergo an oral test for HIV within forty-eight hours  
23 of the defendant's appearance.;

24 And,

25 On page seven, by striking out all of subsection 5.3.

1 (g) The legislative rule filed in the State Register on July  
2 29, 2011, authorized under the authority of section four, article  
3 one, chapter sixteen of this code, relating to the Department of  
4 Health and Human Resources (public water systems design standards,  
5 64 CSR 77), is authorized with the following amendments:

6 On page seven, after subdivision 3.3.d., by inserting a new  
7 subsection, designated subsection 3.4., to read as follows:

8 3.4. Specifications - The applicant or the applicant's  
9 engineer shall supply complete, detailed technical specifications  
10 for the proposed project, including: pipe, valves and other  
11 building materials; a program for keeping existing public water  
12 system facilities in operation during construction of additional  
13 facilities so as to minimize interruption of service; laboratory  
14 facilities and equipment; the number and design of chemical feeding  
15 equipment; and materials or proprietary equipment for sanitary or  
16 other facilities including any necessary backflow or backsiphonage  
17 protection.;

18 On page eleven, by striking out "\$65-77-5." and inserting in  
19 lieu thereof "\$64-77-5.";

20 On page thirty-five, paragraph 6.3.h.2., after the words "at  
21 a minimum," by inserting the word "of";

22 On page forty, paragraph 6.4.g.1., by striking out the word  
23 "led" and inserting in lieu thereof the word "lead";

24 On page forty-five, paragraph 6.4.i.2., by striking out the  
25 word "devise" and inserting in lieu thereof the word "device";

1           On page sixty-seven, paragraph 7.5.d.2., by striking out the  
2 word "shallbe" and inserting in lieu thereof the words "shall be";

3           And,

4           On page sixty-seven, paragraph 7.5.e.3., by striking out the  
5 word "serve" and inserting in lieu thereof the word "severe".

6 **§64-5-3. Division of Human Services.**

7           (a) The legislative rule filed in the State Register on July  
8 29, 2011, authorized under the authority of section four, article  
9 two-b, chapter forty-nine of this code, modified by the Division of  
10 Human Services to meet the objections of the Legislative Rule-  
11 Making Review Committee and refiled in the State Register on  
12 November 23, 2011, relating to the Division of Human Services  
13 (family child care facility licensing requirements, 78 CSR 18), is  
14 authorized.

15           (b) The legislative rule filed in the State Register on July  
16 29, 2011, authorized under the authority of section four, article  
17 two-b, chapter forty-nine of this code, modified by the Division of  
18 Human Services to meet the objections of the Legislative Rule-  
19 Making Review Committee and refiled in the State Register on  
20 November 23, 2011, relating to the Division of Human Services  
21 (family child care home registration requirements, 78 CSR 19), is  
22 authorized.

23           (c) The legislative rule filed in the State Register on July  
24 29, 2011, authorized under the authority of section two, article  
25 two-e, chapter forty-nine of this code, modified by the Division of

1 Human Services to meet the objections of the Legislative Rule-  
2 Making Review Committee and refiled in the State Register on  
3 November 23, 2011, relating to the Division of Human Services  
4 (child care quality rating and improvement system, 78 CSR 22), is  
5 authorized.

6 **§64-5-4. Commission for the Deaf and Hard of Hearing.**

7 (a) The legislative rule filed in the State Register on July  
8 29, 2011, authorized under the authority of section nine, article  
9 fourteen-a, chapter five of this code, relating to the Commission  
10 for the Deaf and Hard of Hearing (fees for qualified interpreters,  
11 192 CSR 1), is authorized.

12 (b) The legislative rule filed in the State Register on July  
13 29, 2011, authorized under the authority of section five, article  
14 fourteen-a, chapter five of this code, modified by the Commission  
15 for the Deaf and Hard of Hearing to meet the objections of the  
16 Legislative Rule-Making Review Committee and refiled in the State  
17 Register on December 1, 2011, relating to the Commission for the  
18 Deaf and Hard of Hearing (establishment of required qualifications  
19 and ethical standards for interpreters and transliterators, 192 CSR  
20 3), is authorized.