

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 195

BY SENATOR MAYNARD, *original sponsor*

[Passed March 10, 2016; in effect from passage]

1 AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as
2 amended, all relating generally to the promulgation of administrative rules by the
3 Department of Health and Human Resources, the Human Rights Commission and the
4 Health Care Authority; authorizing certain of the agencies to promulgate certain legislative
5 rules in the form that the rules were filed in the State Register; authorizing certain of the
6 agencies to promulgate certain legislative rules with various modifications presented to
7 and recommended by the Legislative Rule-Making Review Committee; authorizing certain
8 of the agencies to promulgate certain legislative rules with various amendments
9 recommended by the Legislature; authorizing certain agencies and commissions under
10 the Department of Health and Human Resources to repeal certain legislative, procedural
11 or interpretive rules that are no longer authorized or are obsolete; authorizing the
12 Department of Health and Human Resources to promulgate a legislative rule relating to
13 the preliminary requirement for approval by the West Virginia Department of Health of a
14 laboratory for a specified technique; repealing the Department of Health and Human
15 Resources legislative rule relating to ice cream and frozen milk; repealing the Department
16 of Health and Human Resources legislative rule relating to establishment of a Controlled
17 Substances Therapeutic Research Program and the certification of patients, practitioners
18 and hospital pharmacies; repealing the Department of Health and Human Resources
19 legislative rule relating to the installation of medication in the eyes of newborns and
20 disseminating advice and information concerning the dangers of inflammation of the eyes
21 of the newborn; repealing the Department of Health and Human Resources legislative
22 rule relating to health facilities plan for the fiscal years 1985-1989; repealing the
23 Department of Health and Human Resources legislative rule relating to design, information
24 and procedural manual for mobile home parks; authorizing the Department of Health and
25 Human Resources to promulgate a legislative rule regarding West Virginia clearance for
26 emergency medical services; authorizing the Department of Health and Human

27 Resources to promulgate a legislative rule relating to fees for services; repealing the
28 Department of Health and Human Resources legislative rule relating to pertussis
29 guidelines; repealing the Department of Health and Human Resources legislative rule
30 relating to hazardous materials treatment information repository; authorizing the
31 Department of Health and Human Resources to promulgate a legislative rule relating to
32 infectious medical waste; repealing the Department of Health and Human Resources
33 legislative rule relating to immunization criteria for transfer students; authorizing the
34 Department of Health and Human Resources to promulgate a legislative rule relating to
35 AIDS-related medical testing and confidentiality; repealing the Department of Health and
36 Human Resources legislative rule specialized health procedures in public schools;
37 authorizing the Department of Health and Human Resources to promulgate a legislative
38 rule relating to tuberculosis testing, control, treatment and commitment; authorizing the
39 Department of Health and Human Resources to promulgate a legislative rule relating to
40 farmers market vendors; authorizing the Department of Health and Human Resources to
41 promulgate a legislative rule relating to the certification of opioid overdose prevention and
42 treatment training programs; repealing the Department of Health and Human Resources
43 legislative rule relating to procedural rules for the advisory Committee for the Omnibus
44 Health Care Act; authorizing the Department of Health and Human Resources to
45 promulgate a legislative rule regarding chronic pain management licensure; authorizing
46 the Department of Health and Human Resources to promulgate a legislative rule regarding
47 neonatal abstinence centers; authorizing the Department of Health and Human Resources
48 to promulgate a legislative rule relating to West Virginia clearance for access; registry and
49 employment screening; authorizing the Department of Health and Human Resources to
50 promulgate a legislative rule relating to child care licensing requirement; repealing the
51 Department of Health and Human Resources legislative rule relating to incorporation of
52 the handicapped children services manual; repealing the Department of Health and

53 Human Resources legislative rule relating to termination of income withholding; repealing
54 the Department of Health and Human Resources obtaining support from federal and state
55 income tax refunds; repealing the Department of Health and Human Resources legislative
56 rule relating to interstate income withholding; repealing the Department of Health and
57 Human Resources legislative rule relating to providing information to credit reporting
58 agencies; authorizing the Department of Health and Human Resources to promulgate a
59 legislative rule relating to the family child care facility licensing requirements; authorizing
60 the Department of Health and Human Resources to promulgate a legislative rule relating
61 to the family child care home registration requirements; authorizing the Department of
62 Health and Human Resources to promulgate a legislative rule relating to West Virginia
63 Works program sanctions; authorizing the Department of Health and Human Resources
64 to promulgate a legislative rule relating to qualifications for a restricted provisional license
65 to practice as a social worker within the department; authorizing the Department of Health
66 and Human Resources to promulgate a legislative rule relating to goals for foster children;
67 repealing the Health Care Authority's legislative rule relating to freeze on hospital rates
68 and granting temporary rate increases; repealing the Health Care Authority's legislative
69 rule relating to the Utilization Review and Quality Assurance Program; repealing the
70 Health Care Authority's legislative rule relating to limitation on hospital gross patient
71 revenue; repealing the Health Care Authority's legislative rule relating to exemption for
72 rural primary care hospitals; and authorizing the Human Rights Commission to promulgate
73 a legislative rule relating to the Pregnant Workers' Fairness Act.

Be it enacted by the Legislature of West Virginia:

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

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

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

1 (a) The legislative rule effective on December 29, 1967, authorized under the authority of
2 section seven, article one, chapter sixteen of this code, relating to the Department of Health and
3 Human Resources (preliminary requirement for approval by the West Virginia Department of
4 Health of a laboratory for a specified technique, 64 CSR 26), is repealed.

5 (b) The legislative rule effective on December 29, 1967, authorized under the authority of
6 section seven, article one, chapter sixteen of this code, relating to the Department of Health and
7 Human Resources (ice cream and frozen milk, 64 CSR 28), is repealed.

8 (c) The legislative rule effective on May 16, 1983, authorized under the authority of section
9 seven, article five-a, chapter sixteen of this code, relating to the Department of Health and Human
10 Resources (establishment of a Controlled Substances Therapeutic Research Program and the
11 certification of patients, practitioners and hospital pharmacies, 64 CSR 33), is repealed.

12 (d) The legislative rule effective on May 30, 1983, authorized under the authority of section
13 twelve, article three, chapter sixteen of this code, relating to the Department of Health and Human
14 Resources (instillation of medication in the eyes of the newborn and the dissemination of advice
15 and information concerning the dangers of inflammation of the eyes of the newborn, 64 CSR 35),
16 is repealed.

17 (e) The interpretive rule effective on April 6, 1984, authorized under the authority of
18 section fifteen-a, article one, chapter sixteen of this code, relating to the Department of Health
19 and Human Resources (health facilities plan for the fiscal years 1985-89, 64 CSR 37), is repealed.

20 (f) The interpretive rule effective on October 1, 1971, authorized under the authority of
21 section seven, article one, chapter sixteen of this code, relating to the Department of Health and
22 Human Resources (design, information and procedural manual for mobile home parks, 64 CSR
23 41), is repealed.

24 (g) The legislative rule filed in the State Register on July 31, 2015, authorized under the
25 authority of section four, article one, chapter sixteen of this code, modified by the Department of
26 Health and Human Resources to meet the objections of the Legislative Rule-Making Review
27 Committee and refiled in the State Register on December 8, 2015, relating to the Department of
28 Health and Human Resources (emergency medical services, 64 CSR 48), is authorized with the
29 following amendments:

30 On page thirty-one, paragraph 6.5.d.2, by striking out the phrase “one (1) year” and
31 inserting in lieu thereof, the phrase “one hundred twenty (120) days”;

32 On page thirty-one, paragraph 6.5.d.3, by striking out the phrase “one (1) year” and
33 inserting in lieu thereof, the phrase “one hundred twenty (120) days”;

34 On page thirty-one, paragraph 6.6., by striking out the phrase “two (2)” and inserting
35 “four (4)”

36 On page thirty-five, paragraph 6.14b, after the word “establish” by removing the words
37 “by a procedural rule” and inserting the word “a”;

38 And,

39 On page fifty-seven, by inserting a new section twelve to read as follows:

“§64-48-12. Community Paramedicine Demonstration Projects.

1 12.1 Establishment of community paramedicine demonstration projects. The Director may
2 establish up to 6 demonstration projects for the purpose of developing and evaluating a
3 community paramedicine program. A demonstration project established pursuant to this section
4 may not exceed 2 years in duration.

5 12.2 As used in this section, “community paramedicine” means the practice by an
6 emergency medical services provider primarily in an out-of-hospital setting of providing episodic
7 patient evaluation, advice, and care directed at preventing or improving a particular medical
8 condition which may require emergency medical services providers to function outside their
9 customary emergency response and transport roles, as specifically requested or directed by a

10 physician, in ways that facilitate more appropriate use of emergency care resources and enhance
11 access to primary care for medically vulnerable populations.

12 12.3 The Director shall establish the requirements and application and approval process
13 of demonstration projects established pursuant to this section. At a minimum, an emergency
14 medical services provider that conducts a demonstration project shall:

15 12.3.a. Demonstrate the financial sustainability of its project through reliable funding
16 sources;

17 12.3.b. Work with an identified primary care medical director and have an emergency
18 medical services medical director;

19 12.3.c. Submit protocols for approval by the MPCC and the Commissioner; and

20 12.3.d. Collect and submit data and written reports to the Director, in accordance with
21 requirements established by the Director.”

22 12.4. At the end of two years any demonstration project authorized by the Director will
23 terminate and the Director shall submit a written report to the Commissioner, including specific
24 data on utilization of the program, the improvement in quality of care and care coordination in the
25 community, and the reduction of health care costs with respect to ambulance transportation,
26 hospital emergency department visits, and hospital readmissions. Upon receipt of the annual
27 report, OEMS and the Commissioner shall evaluate the demonstration project and determine how
28 to further develop community paramedicine and whether to expand its scope.”

29 (h) The legislative rule filed in the State Register on July 27, 2015, authorized under the
30 authority of section four, article one, chapter sixteen of this code, relating to the Department of
31 Health and Human Resources (fees for service, 64 CSR 51), is authorized with the following
32 amendments:

33 To Appendix A of 64 CSR 51 at Section1. (Fees for Environmental Chemistry Laboratory
34 Services), B. Organic Compounds, by including a new paragraph 8 to read as follows:
35 Harmful Algae Bloom (HAB)

36 a. Screening analyses for each individual toxin:

37 Analyses may include, but are not limited to, Microcystin, Cylindrospermopsin, Anatoxin-
38 a, Saxitoxin and B-Methylamino-L-alanine. \$65

39 b. Confirmation of each individual toxin:

40 Analyses may include, but are not limited to, Microcystin, Cylindrospermopsin, Anatoxin-
41 a, Saxitoxin and B-Methylamino-L-alanine. \$65

42 (i) The interpretive rule effective on August 1, 1987, authorized under the authority of
43 article three-b, chapter sixteen of this code, relating to the Department of Health and Human
44 Resources (pertussis guidelines, 64 CSR 52), is repealed.

45 (j) The legislative rule effective on June 1, 1987, authorized under the authority of section
46 two, article three-a, chapter sixteen of this code, relating to the Department of Health and Human
47 Resources (hazardous materials treatment information repository, 64 CSR 53), is repealed.

48 (k) The legislative rule filed in the State Register on July 27, 2015, authorized under the
49 authority of section four, article one, chapter sixteen of this code, modified by the Department of
50 Health and Human Resources to meet the objections of the Legislative Rule-Making Review
51 Committee and refiled in the State Register on September 23, 2015, relating to the Department
52 of Health and Human Resources (infectious medical waste, 64 CSR 56), is authorized.

53 (l) The legislative rule effective on April 18, 1988, authorized under the authority of section
54 four, article three, chapter sixteen of this code, relating to the Department of Health and Human
55 Resources (immunization criteria for transfer students, 64 CSR 58), is repealed.

56 (m) The legislative rule filed in the State Register on July 27, 2015, authorized under the
57 authority of section four, article one, chapter sixteen of this code, relating to the Department of
58 Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is
59 authorized.

60 (n) The legislative rule effective on April 22, 1992, authorized under the authority of
61 section twenty-two, article five, chapter eighteen of this code, relating to the Department of Health
62 and Human Resources (specialized health procedures in public schools, 64 CSR 66), is repealed.

63 (o) The legislative rule filed in the State Register on July 27, 2015, authorized under the
64 authority of section two, article three-d, chapter sixteen of this code, relating to the Department of
65 Health and Human Resources (tuberculosis testing, control, treatment and commitment, 64 CSR
66 76), is authorized.

67 (p) The legislative rule filed in the State Register on July 27, 2015, authorized under the
68 authority of section four, article thirty-five, chapter nineteen of this code, modified by the
69 Department of Health and Human Resources to meet the objections of the Legislative Rule-
70 Making Review Committee and refiled in the State Register on October 23, 2015, relating to the
71 Department of Health and Human Resources (farmers market vendors, 64 CSR 102), is
72 authorized with the following amendments:

73 On page 5, section 4, subsection 9, subdivision b, by striking out the words “30th day of
74 June” and inserting in lieu thereof the words “31st day of December”.

75 (q) The legislative rule filed in the State Register on July 27, 2015, authorized under the
76 authority of section four, article one, chapter sixteen of this code, modified by the Department of
77 Health and Human Resources to meet the objections of the Legislative Rule-Making Review
78 Committee and refiled in the State Register on September 23, 2015, relating to the Department
79 of Health and Human Resources (the certification of opioid overdose prevention and treatment
80 training programs, 64 CSR 104), is authorized.

81 (r) The procedural rule effective on December 28, 1989, authorized under the authority of
82 section three, article nine-a, chapter six of this code, relating to the Department of Health and
83 Human Resources (procedural rules for the advisory Committee for the Omnibus Health Care
84 Act, 69 CSR 4), is repealed.

85 (s) The legislative rule filed in the State Register on July 31, 2015, authorized under the
86 authority of section four, article one, chapter sixteen of this code, modified by the Department of
87 Health and Human Resources to meet the objections of the Legislative Rule-Making Review
88 Committee and refiled in the State Register on December 8, 2015, relating to the Department of

89 Health and Human Resources (chronic pain management licensure, 69 CSR 8), is authorized
90 with the following amendments:

91 "On page 3, after subsection 2.24, by inserting new language as follows:

92 '2.25. Terminal Condition – an illness or disease that cannot be cured and the medical
93 prognosis is that the individual's life expectancy is six months or less if the illness runs its normal
94 course.'

95 And, renumbering the remaining subsections.

96 And,

97 On page 3, subdivision 3.1.b, by striking the word 'prescribers' and inserting 'clinic' and
98 inserting after the word 'conditions' the phrase 'that are not terminal'. On page three, subdivision
99 3.1.b, by reinserting the stricken language 'in any one month';

100 And,

101 On page 3, subdivision 3.1.c, after the word, 'office' by reinserting the stricken language
102 'in any one month' and after the word, 'office' by reinserting the stricken language 'in any one
103 month';

104 And,

105 On page 4, subdivision 3.1.c, by inserting after the word 'pain' the phrase 'for conditions
106 that are not terminal';

107 And,

108 On page 4, subdivision 3.1.d, by inserting after the period the following language:

109 'Clinics below the fifty percent patient calculation threshold will be subject to continued
110 monitoring by the Office of Health Facility Licensure and Certification for changes in the patient
111 ratio. Failure to cooperate with requests for information to verify patient calculations may subject
112 the clinic to penalties and equitable relief pursuant to Section 18 of this rule.';

113 And,

114 On page 4, after subdivision 3.1.d, inserting new language as follows:

115 ‘3.1.e. A pain clinic shall not offer a bounty, monetary or equipment or merchandise
116 reward, or free services for individuals in exchange for recruitment of new patients into the clinic.
117 A pain clinic shall not recruit new patients for the purpose of attempting to circumvent the licensure
118 requirements of this rule.’;

119 And,

120 On page 5, by striking subparagraph 3.2.i.2. in its entirety;

121 And,

122 On page 5, subdivision 4.1.d., by inserting the word ‘designated’ before the term ‘physician
123 owner’;

124 And,

125 On page 9, subsection 5.4, by inserting after the period the following:

126 ‘If access is denied, a judge of any court of record in this state having criminal jurisdiction,
127 and upon proper oath or affirmation showing probable cause, may issue administrative warrants
128 for the purpose of conducting inspections and seizures of property appropriate to the inspections.’;

129 And,

130 On page 16, subparagraph 10.2.c.6, after the word, every by removing, ‘90’ and inserting
131 ‘60’;

132 And,

133 On page 20, by inserting new subdivision 11.7.n to read as follows: ‘11.7.n A record of all
134 cash transactions.’;

135 And,

136 On page 26, section 19, by inserting before the word suspended the word ‘denied,’.”

137 (t) The legislative rule filed in the State Register on July 31, 2015, authorized under the
138 authority of section four, article one, chapter sixteen of this code, modified by the Department of
139 Health and Human Resources to meet the objections of the Legislative Rule-Making Review
140 Committee and refiled in the State Register on December 8, 2015, relating to the Department of

141 Health and Human Resources (neonatal abstinence centers, 69 CSR 9), is authorized with the
142 following amendments:

143 On page 14, paragraph 5.5.a.1, after the word, 'field' by inserting the words, 'at the
144 discretion of the governing body'; and On page 14, paragraph 5.5.a.2, after the word, 'field' by
145 inserting the words, 'at the discretion of the governing body';

146 And,

147 On page 21, subdivision 6.8.a, by striking it in its entirety and inserting in lieu thereof,
148 '6.8.a The center shall be located within fifteen minutes of a hospital.';

149 And,

150 On page 22, subdivision 6.9.b, by striking 'sources such as railroads, freight yards, traffic
151 arteries and airports';

152 And,

153 On page 30, subdivision 7.9.f by striking the word, 'Mothers' and inserting the word,
154 'Parents';

155 And,

156 On page 36 subdivision 9.5.a by striking the word, 'shall' and inserting the word, 'may';

157 And,

158 On page 37, subdivision 9.8.a, after the word, 'all' by inserting, 'patient care'; On page 37,
159 subdivision 9.8.b, after the word, 'all' by inserting, 'patient care'; On page 37, subdivision 9.8.c,
160 after the word, 'all' by inserting, 'patient care'; and On page 38, subdivision 9.8.d, after the word,
161 'new' by inserting, 'patient care'

162 And,

163 On page 52, subsection 14.1 by striking the word, 'Mothers' and inserting the word,
164 'Parents'; On page 53, subdivision 14.2.a. by striking the word, 'Mothers' and inserting the word,
165 'Parents'; and On page 53, subdivision 14.2.b. by striking the word, 'Mothers' and inserting the
166 word, 'Parents'."

167 (u) The legislative rule filed in the State Register on July 31, 2015, authorized under the
168 authority of section nine, article forty-nine, chapter sixteen of this code, modified by the
169 Department of Health and Human Resources to meet the objections of the Legislative Rule-
170 Making Review Committee and refiled in the State Register on October 23, 2015, relating to the
171 Department of Health and Human Resources (West Virginia clearance for access; registry and
172 employment screening, 69 CSR 10), is authorized , with the following amendments:

173 On page two, subsection 2.5, by deleting the period at the end of the subsection, and by
174 inserting a comma and new language as follows: "and any provider authorized by the Secretary."

175 And,

176 On page three, subdivisions 2.11.i. and 2.11.j. by renumbering them 2.10.i and 2.10.j. and
177 by inserting the word "Felony" before the word "crimes";

178 And,

179 On page four, after subsection 5.2, insert new language as follows:

180 "5.3 If the Secretary's review of an applicant's criminal history record information reveals
181 a pending charge that has not received a final disposition, the following shall apply:

182 5.3.a. If the pending charge is a disqualifying misdemeanor offense, and the applicant
183 has not had a conviction for a disqualifying offense in the last seven years, the Secretary shall
184 provide written notice to the covered provider or covered contractor advising that the applicant is
185 eligible for work.

186 5.3.b. If the pending charge is a disqualifying felony offense, the Secretary shall provide
187 written notice to the covered provider or covered contractor advising that the applicant is ineligible
188 for work, unless a variance has been requested or granted.

189 5.3.c. Once a final disposition has been made on the pending charge, the Secretary shall
190 review the criminal history record information de novo in accordance§ with the provisions of this
191 rule and W.Va. Code §16-49-1 et seq.”

192 And renumber the remaining subsections.

193 (v) The legislative rule filed in the State on July 31, 2015, authorized under the authority
194 of section one hundred twenty-one, article two, chapter forty-nine of this code, relating to the
195 Department of Health and Human Resources (child care licensing requirements, 78 CSR 1), is
196 authorized.

197 (w) The legislative rule effective on November 1, 1985, authorized under the authority of
198 article four, chapter forty-nine of this code, relating to the Department of Health and Human
199 Resources (incorporation of the handicapped children services manual, 78 CSR 9), is repealed.

200 (x) The legislative rule effective on June 15, 1989, authorized under the authority of section
201 three, article five, chapter forty-eight-a of this code, relating to the Department of Health and
202 Human Resources (termination of income withholding, 78 CSR 11), is repealed.

203 (y) The legislative rule effective on June 15, 1989, authorized under the authority of
204 section fifteen, article two, chapter forty-eight-a of this code, relating to the Department of Health
205 and Human Resources (obtaining support from federal and state income tax refunds, 78 CSR
206 12), is repealed.

207 (z) The legislative rule effective on June 15, 1989, authorized under the authority of section
208 eleven, article two, chapter forty-eight-a of this code, relating to the Department of Health and
209 Human Resources (interstate income withholding, 78 CSR 13), is repealed.

210 (aa) The legislative rule effective on June 15, 1989, authorized under the authority of
211 section nineteen, article two, chapter forty-eight-a of this code, relating to the Department of
212 Health and Human Resources (providing information to credit reporting agencies, 78 CSR 14), is
213 repealed.

214 (bb) The legislative rule filed in the State Register on July 31, 2015, authorized under the
215 authority of section one hundred twenty-one, article two, chapter forty-nine of this code, relating
216 to the Department of Health and Human Resources (family child care facility licensing
217 requirements, 78 CSR 18), is authorized.

218 (cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the
219 authority of section one hundred twenty-one, article two, chapter forty-nine of this code, modified
220 by the Department of Health and Human Resources to meet the objections of the Legislative
221 Rule-making Review Committee and refiled in the State Register on October 28, 2015, relating to
222 the Department of Health and Human Resources (family child care home registration
223 requirements, 78 CSR 19), is authorized.

224 (dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the
225 authority of section eleven, article nine, chapter nine of this code, modified by the Department of
226 Health and Human Resources to meet the objections of the Legislative Rule-making Review
227 Committee and refiled in the State Register on November 13, 2015, relating to the Department of
228 Health and Human Resources (W.Va. Works Program sanctions, 78 CSR 23), is authorized with
229 the following amendments:

230 On page 3, by striking section 4 in its entirety and inserting in lieu thereof a new section
231 four to read as follows:

232 “The sanctions are applied in the form of termination of benefits for a specific length of
233 time. The length of termination of benefits is determined as follows:

234 First sanction – entire assistance group ineligible for one month;

235 Second sanction – entire assistance group ineligible for six months;

236 Third sanction – entire assistance group ineligible for one year; but may reapply within
237 one year.”

238 (ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the
239 authority of section sixteen, article thirty, chapter thirty of this code, modified by the Department

240 of Health and Human Resources to meet the objections of the Legislative Rule-Making Review
241 Committee and refiled in the State Register on December 8, 2015, relating to the Department of
242 Health and Human Resources (qualifications for a restricted provisional license to practice as a
243 social worker within the department, 78 CSR 24), is authorized.

244 (ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the
245 authority of section one hundred twenty-six, article two, chapter forty-nine of this code, modified
246 by the Department of Health and Human Resources to meet the objections of the Legislative
247 Rule-Making Review Committee and refiled in the State Register on December 22, 2015, relating
248 to the Department of Health and Human Resources (goals for foster children, 78 CSR 25), is
249 authorized.

§64-5-2. Health Care Authority.

1 (a) The legislative rule effective on May 5, 1984, authorized under the authority of section
2 one, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority
3 (freeze on hospital rates and granting of temporary rate increases, 65 CSR 2), is repealed.

4 (b) The legislative rule effective on May 20, 1985, authorized under the authority of section
5 eight, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority
6 (Utilization Review and Quality Assurance Program – Phase 1, 65 CSR 4), is repealed.

7 (c) The legislative rule effective on April 10, 1984, authorized under the authority of section
8 one, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority
9 (limitation on hospital gross patient revenue, 65 CSR 8), is repealed.

10 (d) The legislative rule effective on June 24, 1993, authorized under the authority of
11 section four, article two-d, chapter sixteen of this code, relating to the Health Care Authority
12 (exemption for rural primary care hospitals, 65 CSR 25), is repealed.

§64-5-3. Human Rights Commission.

1 The legislative rule filed in the State Register on July 31, 2015, authorized under the
2 authority of section four, article eleven-b, chapter five of this code, modified by the Human Rights

3 Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled
4 in the State Register on December 8, 2015, relating to the Human Rights Commission (Pregnant
5 Workers' Fairness Act, 77 CSR 10), is authorized with the amendments set forth below:

6 On pages 1 through 3, sections 1 through 5, by striking out all of sections 1 through 5 and
7 inserting in lieu thereof the following:

§77-10-1. General.

1 1.1. Scope. The following legislative rule series, filed pursuant to the West Virginia
2 Pregnant Workers' Fairness Act (PWFA), W. Va. Code §5-11B-1 et seq., sets forth
3 definitions and identifies some reasonable accommodations addressing known
4 limitations related to pregnancy, childbirth, or related medical conditions.

5 1.2. Authority. – W. Va. Code §5-11B-4.

6 1.3. Filing date. – July 31, 2015.

7 1.4. Effective Date. –

§77-10-2. Definitions.

1 2.1. "Affected by pregnancy" means a woman who is pregnant or is experiencing medical
2 conditions related to her pregnancy which has ended.

3 2.2. "Undue hardship" – In general, the term "undue hardship" means an action requiring
4 significant difficulty or expense, when considered in light of the factors set forth in subdivision

5 2.2.1.

6 2.2.1. Factors to be considered. In determining whether an accommodation would impose
7 an undue hardship on a covered entity, factors to be considered include:

8 2.2.1.a. The nature and cost of the accommodation needed under this article;

9 2.2.1.b. The overall financial resources of the facility or facilities involved in the provision
10 of the reasonable accommodation; the number of persons employed at such facility; the effect on

11 expenses and resources, or the impact otherwise of such accommodation upon the operation of
12 the facility;

13 2.2.1.c. The overall financial resources of the covered entity; the overall size of the
14 business of a covered entity with respect to the number of its employees; the number, type, and
15 location of its facilities; and

16 2.2.1.d. The type of operation or operations of the covered entity, including the
17 composition, structure, and functions of the workforce of such entity; the geographic
18 separateness, administrative, or fiscal relationship of the facility or facilities in question to the
19 covered entity.

20 2.3. "Reasonable accommodation" – The term "reasonable accommodation" may include:

21 2.3.1. Making existing facilities used by employees readily accessible to and usable by
22 individuals with disabilities; and

23 2.3.2. Job restructuring, part-time or modified work schedules, reassignment to a vacant
24 position, acquisition or modification of equipment or devices, appropriate adjustment or
25 modifications of examinations, training materials or policies, the provision of qualified readers or
26 interpreters, and other similar accommodations for individuals with disabilities.

27 2.4. "Related medical conditions" means physical and mental symptoms or limitations
28 relating to or caused by a pregnancy, including but not limited to, miscarriage, complications of
29 pregnancy or childbirth, gestational diabetes, pregnancy-induced hypertension, after-effects of
30 delivery, post-partum depression, and lactation: *Provided*, That an elective abortion shall not be
31 considered a related medical condition.

32 2.5. "Covered Entity" means the state, or any political subdivision thereof, and any person
33 employing twelve or more persons within the state for twenty or more calendar weeks in the
34 calendar year in which the act of discrimination allegedly took place or the preceding calendar
35 year: *Provided*, That such terms shall not be taken, understood or construed to include a private
36 club.

37 2.6. "Person" means one or more individuals, partnerships, associations, organizations,
38 corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in
39 bankruptcy, receivers and other organized groups of persons.

§77-10-3. Examples of Reasonable Accommodations.

1 3.1. Reasonable accommodations that may be made by a covered entity include, but are
2 not limited to:

3 3.1.1. Bathroom breaks;

4 3.1.2. Breaks for increased water intake;

5 3.1.3. Periodic rest;

6 3.1.4. Assistance with manual labor;

7 3.1.5. Providing time off for prenatal medical appointments;

8 3.1.6. Modified work policies or procedures;

9 3.1.7. Temporary transfers to less strenuous or less hazardous work;

10 3.1.8. Allowing for more time or more frequent eating;

11 3.1.9. Allowing time for taking prescribed medications; and

12 3.1.10. Providing access to existing facilities that are more convenient and usable by a
13 woman affected by pregnancy.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2016.

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Governor