

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 699

BY SENATOR KARNES

[Introduced February 22, 2016;

Referred to the Committee on Health and Human
Resources.]

1 A BILL to amend and reenact §64-5-2 of the Code of West Virginia, 1931, as amended, relating
 2 to reauthorizing, with amendment, the legislative rule contained in title sixty-four, series
 3 seventeen of the Code of State Rules, relating to food establishments (64 CSR 17); and
 4 allowing certain foods to be produced in a private home kitchen for sale at a farmers
 5 market, consignment farmers market, on-farm stand, roadside stand and online market
 6 under specified conditions.

Be it enacted by the Legislature of West Virginia:

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

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

§64-5-2. Bureau for Public Health.

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

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

13 On page two, subdivision 4.1.e, by inserting the following after the period, "The cost of the

14 test not be passed through to the patient by a public health department.”

15 On page six, paragraph 4.3.b.1., by striking out the words “an oral” and inserting in lieu
16 thereof the word a; on page six, by striking out all of subparagraph 4.3.b.1.A.

17 And,

18 Inserting in lieu thereof the following:

19 4.3.b.1.A. The court shall require the defendant or juvenile respondent to submit to the
20 testing not later than forty-eight hours after the issuance of the order described in paragraph
21 4.3.b.1 of this subsection, unless good cause for delay is shown upon a request for a hearing:
22 *Provided*, That no such delay shall cause the HIV-related testing to be administered later than
23 forty-eight hours after the filing of any indictment or information regarding an adult defendant or
24 the filing of a petition regarding a juvenile respondent.

25 4.3.b.1.B. The prosecuting attorney may, upon the request of the victim or the victims
26 parent or legal guardian, and with notice to the defendant or juvenile respondent, apply to the
27 court for an order directing that an appropriate human immunodeficiency virus (HIV) test or other
28 STD test be performed on a defendant charged with or a juvenile subject to a petition involving
29 the offenses of prostitution, sexual abuse, sexual assault or incest.

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

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

32 And renumbering the remaining paragraphs;

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

35 4.3.b.5. The costs of testing may be charged to the defendant or juvenile respondent, or
36 to that persons medical insurance provider, unless determined unable to pay by the court having
37 jurisdiction over the matter. If the defendant or juvenile is unable to pay, the cost of laboratory
38 testing for HIV testing may be borne by the bureau or the local health department.

39 4.3.b.5.A. The commissioner designates and authorizes all health care providers
40 operating in regional jails, correctional or juvenile facilities to administer HIV tests, either by taking
41 blood or oral specimens, and transmitting those specimens to the Office of Laboratory Services
42 in accordance with instructions set forth at:
43 <http://www.wvdhhr.org/labservices/labe/HIV/index.cfm>.

44 4.3.b.5.B. Laboratory testing done on specimens sent to the Office of Laboratory Services
45 by health care providers for regional jails, correctional or juvenile facilities shall be performed at
46 no cost to the jails, facilities or health care providers.; and, on page seven, by striking out all of
47 subdivision 4.3.d. and inserting in lieu thereof a new subdivision, designated subdivision 4.3.d.,
48 to read as follows:

49 4.3.d. A person convicted or a juvenile adjudicated of the offenses described in this
50 subsection may be required to undergo HIV-related testing and counseling immediately upon
51 conviction or adjudication: *Provided*, that if the person convicted or adjudicated has been tested
52 in accordance with the provisions of subdivision 4.3.b. of this subsection, that person need not be
53 retested.

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

59 (d) The legislative rule filed in the State Register on July 24, 2013, authorized under the
60 authority of section three, article twelve, chapter sixty-one of this code, modified by the
61 Department of Health and Human Resources to meet the objections of the Legislative Rule-
62 Making Review Committee and refiled in the State Register on November 5, 2013, relating to the
63 Department of Health and Human Resources (Medical Examiner rule for postmortem inquiries,

64 64 CSR 84), is authorized.

65 (e) The legislative rule contained in title sixty-four, series seventeen, and filed in the State
66 Register on April 2, 2008, authorized under the authority of section four, article one, chapter
67 sixteen and section two, article six, chapter sixteen of this code, relating to the Department of
68 Health and Human Resources (food establishments, 64 CSR 17), is reauthorized with the
69 following amendment:

70 On page three, by inserting after subdivision 4.3.d, the following:

71 4.3.d.1. Potentially hazardous foods that include whole canned vegetables, pickled
72 products, fermented products, tomato based products, including but not limited to salsa and
73 tomato sauce, pepper sauces, mustard, pesto, minced garlic, soup mixes, frozen fruits and
74 vegetables, and dehydrated fruits and vegetables are allowed to be produced in a private home
75 kitchen for sale at a farmers market, consignment farmers market, on-farm stand, roadside stand,
76 and online market if:

77 4.3.d.1.A. The vendor receives a Certificate of Completion from the West Virginia
78 Department of Agriculture Better Home Processing Food Control School, passes a home kitchen
79 inspection by the Department of Health and Human Resources, and has a home-based micro
80 processing permit from the Department of Health and Human Resources.

81 4.3.d.1.B. The bulk ingredient of the potentially hazardous products are sourced from their
82 own farm or garden, and the remaining ingredients must be source-cited on a label that is
83 approved and in compliance with West Virginia Department of Agriculture labeling standards.

84 4.3.d.1.C. Each vendor is limited to the sale of 10,000 units per year of any potentially
85 hazardous food item processed in a private home kitchen.

NOTE: The purpose of this bill is to reauthorize the legislative rule filed in the State Register on April 2, 2008, relating to the Department of Health and Human Resources (food establishments 64 CSR 17), with an amendment. The amendment would allow certain

foods to be produced in a private home kitchen for sale at a farmers market, consignment farmers market, on-farm stand, roadside stand, and online market, under specified conditions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.