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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 305

(By Senator ROSS, ET AL)



PASSED MARCH 10, 1999
In Effect FROM Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 305

(SENATORS ROSS, ANDERSON, BOWMAN
AND BOLEY, *original sponsors*)

[Passed March 10, 1999; in effect from passage.]

AN ACT to amend and reenact section one, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and 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 legislative rules as amended by the Legislature; autho-

rizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of the agencies to propose and promulgate certain legislative rules; authorizing the department of health and human resources health care authority to promulgate a legislative rule relating to bench-marking and discount contracts; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to public water systems; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to reportable diseases, events and conditions; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to sanitation; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to lead abatement licensing; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to legally unlicensed health care homes; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to infectious medical waste; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to medication administration by unlicensed personnel; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to public water systems capacity development; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to the interstate compact on mental health; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to licensed behavioral health service responsibilities and consumer rights; directing the department of health and human resources division of health to promulgate an emergency and legislative rule relating to residential care communities; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to tuberculosis control; and authorizing the department of health and human resources division of health to promulgate a legislative rule relating to radon licensure.

Be it enacted by the Legislature of West Virginia:

That section one, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section two, all to read as follows:

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

§64-5-1. Health care authority.

1 The legislative rule filed in the state register on the
2 eighteenth day of December, one thousand nine hundred
3 ninety-eight, under the authority of sections eight and
4 twenty, article twenty-nine-b, chapter sixteen, of this
5 code, modified by the health care authority to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twenty-second day
8 of January, one thousand nine hundred ninety-nine,
9 relating to the health care authority (bench-marking and
10 discount contracts, 65 CSR 26), is authorized, with the
11 amendment set forth below:

12 On page 11, subsection 23.4.c after the word "Authority"
13 by striking out the comma and the words "minus deprecia-
14 tion and interest".

§64-5-2. State board of health; division of health.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred ninety-
3 eight, authorized under the authority of section nine-a,
4 article one, chapter sixteen, of this code, modified by the
5 division of health to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-eighth day of December, one
8 thousand nine hundred ninety-eight, relating to the
9 division of health (public water systems, 64 CSR 3), is
10 authorized.

11 (b) The legislative rule filed in the state register on the
12 third day of August, one thousand nine hundred ninety-
13 eight, authorized under the authority of section one, article
14 three, chapter sixteen, of this code, modified by the
15 division of health to meet the objections of the legislative
16 rule-making review committee and refiled in the state
17 register on the twentieth day of January, one thousand
18 nine hundred ninety-nine, relating to the division of health
19 (reportable diseases, events and conditions, 64 CSR 7), is
20 authorized with the amendments set forth below:

21 On page four, section 3.3.b., by striking out everything
22 after the words "Category I.A diseases and conditions
23 reportable by health care providers and health care
24 facilities are:" and inserting in lieu thereof the following:

- 25 3.3.b.1. Anthrax;
- 26 3.3.b.2. Botulism;
- 27 3.3.b.3. Brucellosis;
- 28 3.3.b.4. Cholera;
- 29 3.3.b.5. Dengue Fever;
- 30 3.3.b.6. Diphtheria;
- 31 3.3.b.7. E. Coli O157:H7 Disease;
- 32 3.3.b.8. Foodborne Disease;
- 33 3.3.b.9. Haemophilus influenzae, Invasive Disease;
- 34 3.3.b.10. Hemolytic Uremic Syndrome, postdiarrheal;
- 35 3.3.b.11. Hepatitis A, Acute;
- 36 3.3.b.12. Hepatitis B, Acute or perinatal;
- 37 3.3.b.13. Hepatitis D;
- 38 3.3.b.14. Meningococcal Disease, Invasive;
- 39 3.3.b.15. An outbreak or cluster of any illness or condi-
40 tion - suspect or confirmed;

- 41 3.3.b.16. Pertussis (Whooping Cough);
 - 42 3.3.b.17. Plague;
 - 43 3.3.b.18. Poliomyelitis;
 - 44 3.3.b.19. Rabies in Animals or in Humans;
 - 45 3.3.b.20. Rubella (German Measles);
 - 46 3.3.b.21. Rubeola (Measles);
 - 47 3.3.b.22. Tuberculosis (All Forms, include antibiotic
 - 48 susceptibility patterns)*;
 - 49 3.3.b.23. Tularemia;
 - 50 3.3.b.24. Typhoid Fever;
 - 51 3.3.b.25. Waterborne Disease; and
 - 52 3.3.b.26. Yellow Fever.
- 53 On page five, section 3.3.d., by striking out everything
- 54 after the words "Category I.B diseases and conditions
- 55 reportable by laboratories are:" and inserting in lieu
- 56 thereof the following:
- 57 3.3.d.1. Bacillus anthracis;
 - 58 3.3.d.2. Bordatella pertussis, microbiologic evidence;
 - 59 3.3.d.3. Brucellosis, microbiologic or serologic evidence;
 - 60 3.3.d.4. Clostridium botulinum, microbiologic or
 - 61 toxicologic evidence;
 - 62 3.3.d.5. Corynebacterium diphtheriae, microbiologic or
 - 63 histopathologic evidence;
 - 64 3.3.d.6. Dengue Fever, serologic evidence;
 - 65 3.3.d.7. E. Coli O157:H7 from any site;
 - 66 3.3.d.8. E. Coli O157:NM, Shiga-like toxin-producing,
 - 67 from any clinical specimen;
 - 68 3.3.d.9. Haemophilus influenzae from any normally
 - 69 sterile body site;

- 70 3.3.d.10. Hepatitis A, positive IgM;
- 71 3.3.d.11. Hepatitis B, positive anti-HBc IgM or HBsAg;
- 72 3.3.d.12. Hepatitis D, positive serology;
- 73 3.3.d.13. Neisseria meningitidis from a normally sterile
74 site;
- 75 3.3.d.14. Outbreak or cluster of any illness or condition -
76 suspect or confirmed;
- 77 3.3.d.15. Poliomyelitis, virologic or serologic evidence;
- 78 3.3.d.16. Rabies, animal or human;
- 79 3.3.d.17. Rubella, virologic or serologic evidence;
- 80 3.3.d.18. Rubeola, virologic or serologic evidence;
- 81 3.3.d.19. Salmonella typhi from any site;
- 82 3.3.d.20. Tularemia, culture, antigen or serologic evi-
83 dence;
- 84 3.3.d.21. Vibrio cholerae, microbiologic or serologic
85 evidence;
- 86 3.3.d.22. Yellow Fever, virologic or serologic evidence;
- 87 3.3.d.23. Yersinia pestis, microbiologic or serologic
88 evidence; and
- 89 3.3.d.24 Other laboratory evidence suggestive of current
90 infection with any of the diseases or conditions listed in
91 Category I.A.

92 On page 6, section 3.4.b., by striking out everything after
93 the words "Category II.A diseases reportable by health
94 care providers and health care facilities are:" and inserting
95 in lieu thereof the following:

- 96 3.4.b.1. Amebiasis;
- 97 3.4.b.2. Campylobacteriosis;
- 98 3.4.b.3. Chickenpox (numerical totals only);
- 99 3.4.b.4. Cryptosporidiosis;

- 100 3.4.b.5. Cyclospora;
- 101 3.4.b.6. Encephalitis, Arboviral;
- 102 3.4.b.7. Encephalitis, Other primary and unspecified;
- 103 3.4.b.8. Giardiasis;
- 104 3.4.b.9. Hantavirus Disease;
- 105 3.4.b.10. Hepatitis C / Other non-A or non-B, acute;
- 106 3.4.b.11. Influenza-like Illness (numerical totals only);
- 107 3.4.b.12. Leptospirosis;
- 108 3.4.b.13. Listeria;
- 109 3.4.b.14. Lyme Disease;
- 110 3.4.b.15. Malaria;
- 111 3.4.b.16. Meningitis, Other Bacterial (cases not reported
112 as other specific disease types);
- 113 3.4.b.17. Meningitis, Viral or Aseptic;
- 114 3.4.b.18. Mumps;
- 115 3.4.b.19. Psittacosis;
- 116 3.4.b.20. Rheumatic Fever;
- 117 3.4.b.21. Rocky Mountain Spotted Fever;
- 118 3.4.b.22. Rubella, Congenital Syndrome;
- 119 3.4.b.23. Salmonellosis (except Typhoid Fever);
- 120 3.4.b.24. Shigellosis;
- 121 3.4.b.25. Streptococcal Disease, Invasive Group A,
122 (Streptococcus pyogenes);
- 123 3.4.b.26. Streptococcal Toxic Shock Syndrome;
- 124 3.4.b.27. Streptococcus pneumoniae, drug resistant
125 invasive disease, (include antibiotic susceptibility pat-
126 terns);
- 127 3.4.b.28. Tetanus;

- 128 3.4.b.29. Trichinosis; and
- 129 3.4.b.30. Unexplained or ill-defined illness, condition, or
130 health occurrence of potential public health significance.
- 131 On page 7, section 3.4.d., by striking everything after the
132 words "Category II.B condition reportable by laboratories
133 are:" and inserting in lieu thereof the following:
- 134 3.4.d.1. *Borrelia burgdorferi* from culture, or diagnostic
135 levels of IgG or IgM, (preferably followed by a western
136 blot);
- 137 3.4.d.2. *Campylobacter*;
- 138 3.4.d.3. *Cryptosporidium*;
- 139 3.4.d.4. *Cyclospora*;
- 140 3.4.d.5. Encephalitis, virologic, serologic, or other
141 evidence of arboviral or other encephalitides;
- 142 3.4.d.6. *Entamoeba histolytica*;
- 143 3.4.d.7. *Giardia lamblia*, microscopic or
144 immunodiagnostic evidence;
- 145 3.4.d.8. Hantavirus infection, serologic, PCR,
146 immunohistochemistry, or other evidence;
- 147 3.4.d.9. Hepatitis C, positive HCV antibody confirmed
148 with approved supplemental test (e.g. RIBA);
- 149 3.4.d.10. Leptospirosis, virologic or serologic evidence;
- 150 3.4.d.11. *Listeria monocytogenes*;
- 151 3.4.d.12. Malaria organisms on smear of blood;
- 152 3.4.d.13. Meningitis, as indicated by bacterium in spinal
153 fluid;
- 154 3.4.d.14. Meningitis, Viral, virologic or serologic evi-
155 dence;
- 156 3.4.d.15. Mumps, virologic or serologic evidence;
- 157 3.4.d.16. Psittacosis, microbiologic or serologic evidence;

- 158 3.4.d.17. Rocky Mountain Spotted Fever, serologic
159 evidence;
- 160 3.4.d.18. Salmonella (any species, excluding Salmonella
161 typhi);
- 162 3.4.d.19. Shigella (any species);
- 163 3.4.d.20. Streptococcus pyogenes (Group A Streptococ-
164 cus) from a normally sterile site;
- 165 3.4.d.21. Streptococcus pneumoniae, from a normally
166 sterile site (include antibiotic susceptibility patterns on all
167 isolates);
- 168 3.4.d.22. Trichinosis, demonstration of cysts or serologic
169 evidence;
- 170 3.4.d.23. Tularemia, culture, antigen or serologic evi-
171 dence;
- 172 3.4.d.24. Unexplained or ill-defined illness, condition, or
173 health occurrence of potential public health significance;
174 and
- 175 3.4.d.25. Other laboratory evidencesuggestive of current
176 infection with any of the diseases or conditions listed in
177 Category II.A.

178 And,

179 On page 15, section 9.1, by adding the following after the
180 first sentence: "Local health departments may copy and
181 distribute this rule to local health care providers at no
182 cost."

183 (c) The legislative rule filed in the state register on the
184 thirty-first day of July, one thousand nine hundred ninety-
185 eight, authorized under the authority of section seven,
186 article one, chapter sixteen, of this code, modified by the
187 division of health to meet the objections of the legislative
188 rule-making review committee and refiled in the state
189 register on the twentieth day of November, one thousand
190 nine hundred ninety-eight, relating to the division of
191 health (general sanitation, 64 CSR 18), is authorized.

192 (d) The legislative rule filed in the state register on the
193 thirtieth day of July, one thousand nine hundred ninety-
194 eight, authorized under the authority of section four,
195 article thirty-five, chapter sixteen, of this code, modified
196 by the division of health to meet the objections of the
197 legislative rule-making review committee and refiled in
198 the state register on the twentieth day of November, one
199 thousand nine hundred ninety-eight, relating to the
200 division of health (lead abatement licensing, 64 CSR 45),
201 is authorized.

202 (e) The legislative rule filed in the state register on the
203 third day of August, one thousand nine hundred ninety-
204 eight, authorized under the authority of section seven,
205 article one, chapter sixteen, of this code, modified by the
206 division of health to meet the objections of the legislative
207 rule-making review committee and refiled in the state
208 register on the twenty-eighth day of December, one
209 thousand nine hundred ninety-eight, relating to the
210 division of health (legally unlicensed health care homes, 64
211 CSR 50), is authorized.

212 (f) The legislative rule filed in the state register on the
213 tenth day of September, one thousand nine hundred
214 ninety-eight, authorized under the authority of section six-
215 a, article five-j, chapter twenty, of this code, modified by
216 the division of health to meet the objections of the legisla-
217 tive rule-making review committee and refiled in the state
218 register on the twenty-fifth day of January, one thousand
219 nine hundred ninety-nine, relating to the division of health
220 (infectious medical waste, 64 CSR 56), is authorized.

221 (g) The legislative rule filed in the state register on the
222 third day of August, one thousand nine hundred ninety-
223 eight, authorized under the authority of section eleven,
224 article five-0, chapter sixteen, of this code, modified by the
225 division of health to meet the objections of the legislative
226 rule-making review committee and refiled in the state
227 register on the twentieth day of January, one thousand
228 nine hundred ninety-nine, relating to the division of health
229 (medication administration by unlicensed personnel, 64
230 CSR 60), is authorized.

231 (h) The legislative rule filed in the state register on the
232 third day of August, one thousand nine hundred ninety-
233 eight, authorized under the authority of section two,
234 article thirteen-c, chapter sixteen, of this code, modified
235 by the division of health to meet the objections of the
236 legislative rule-making review committee and refiled in
237 the state register on the nineteenth day of January, one
238 thousand nine hundred ninety-nine, relating to the divi-
239 sion of health (public water systems capacity development,
240 64 CSR 61), is authorized.

241 (i) The legislative rule filed in the state register on the
242 thirty-first day of July, one thousand nine hundred ninety-
243 eight, authorized under the authority of section two,
244 article fourteen, chapter twenty-seven, of this code,
245 modified by the division of health to meet the objections of
246 the legislative rule-making review committee and refiled
247 in the state register on the twenty-third day of November,
248 one thousand nine hundred ninety-eight, relating to the
249 division of health (interstate compact on mental health, 64
250 CSR 72), is authorized.

251 (j) The legislative rule filed in the state register on the
252 third day of August, one thousand nine hundred
253 ninety-eight, authorized under the authority of section
254 nine, article five, chapter twenty-seven, of this code,
255 modified by the division of health to meet the objections of
256 the legislative rule-making review committee, refiled in
257 the state register on the twenty-fifth day of January, one
258 thousand nine hundred ninety-nine, and withdrawn by the
259 division on the eleventh day of February, one thousand
260 nine hundred ninety-nine, relating to the division of health
261 (licensed behavioral health service responsibilities and
262 consumer rights, 64 CSR 74), is not authorized. The
263 division of health is directed to refile the rule, with
264 necessary modifications and in accordance with the
265 memorandum of understanding between the division and
266 various affected parties, as an emergency rule by the first
267 day of July, one thousand nine hundred ninety-nine and
268 propose said rule for legislative promulgation pursuant to
269 the provisions of article three, chapter twenty-nine-a of
270 this code.

271 (k) The legislative rule filed in the state register on the
272 third day of August, one thousand nine hundred ninety-
273 eight, authorized under the authority of sections three and
274 five, article five-n, chapter sixteen, of this code, modified
275 by the division of health to meet the objections of the
276 legislative rule-making review committee and refiled in
277 the state register on the sixth day of January, one thou-
278 sand nine hundred ninety-nine, relating to the division of
279 health (residential care communities, 64 CSR 75), is
280 authorized.

281 (l) The legislative rule filed in the state register on the
282 third day of August, one thousand nine hundred ninety-
283 eight, authorized under the authority of section seven,
284 article five-a, chapter twenty-six, of this code, modified by
285 the division of health to meet the objections of the legisla-
286 tive rule-making review committee and refiled in the state
287 register on the twentieth day of November, one thousand
288 nine hundred ninety-eight, relating to the division of
289 health (tuberculosis control, 64 CSR 76), is authorized.

290 (m) The legislative rule filed in the state register on the
291 third day of August, one thousand nine hundred ninety-
292 eight, authorized under the authority of section six, article
293 thirty-four, chapter sixteen, of this code, modified by the
294 division of health to meet the objections of the legislative
295 rule-making review committee and refiled in the state
296 register on the twentieth day of November, one thousand
297 nine hundred ninety-eight, relating to the division of
298 health (radon licensure, 64 CSR 78), is authorized.

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

Ray Schramm
.....
Chairman Senate Committee

Joe F. Arritt
.....
Chairman House Committee

Originating in the Senate.

In effect from passage.

Darrell Atkins
.....
Clerk of the Senate

Barry M. Boy
.....
Clerk of the House of Delegates

Carl Rex Tomblin
.....
President of the Senate

John W. Row
.....
Speaker House of Delegates

The within *approved* this the *27th*
Day of *March*, 1999

Sei O. Anderson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/99

Time 10:11 AM