

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2171**

4 (By Delegates Fleischauer, Miley, Caputo, Pino, Overington and
5 Sobonya)
6

7 (Originating in the House Committee on the Judiciary)

8 [March 13, 2013]
9

10 A BILL to amend and reenact §29A-1-2 and §29A-1-3 of the Code of
11 West Virginia, 1931, as amended; to amend and reenact §29A-3-
12 1a, §29A-3-4, §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and
13 §29A-3-15b of said code; and to amend said code by adding two
14 new sections, designated §29A-3-1c and §29A-3-9a, all relating
15 to review of State Administrative Agency rule-making; defining
16 terms; altering designation of types of rules that have not
17 been approved by the Legislature and that are exempt from
18 legislative review; establishing deadline for action by agency
19 action for certain proposed rules before the rule is deemed
20 withdrawn; requiring agency response to public comments;
21 requiring all sections of a rule be filed when agency
22 proposing rule amendment; providing for methodology for repeal
23 of rules; establishing new publishing and rule-making
24 requirements for certain Department of Health and Human
25 Services policy manuals; revising emergency rule-making
26 process to allow for public comment, more information, and
27 extended comment period; providing new process for provisional

1 legislative rules; and altering certain agency filing
2 requirements.

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

4 That §29A-1-2 and §29A-1-3 of the Code of West Virginia, 1931,
5 as amended, be amended and reenacted; that §29A-3-1a, §29A-3-4,
6 §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and §29A-3-15b of said
7 code be amended and reenacted; and that said code be amended by
8 adding two new sections, designated §29A-3-1c and §29A-3-9a, all to
9 read as follows:

10 **ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.**

11 **§29A-1-2. Definitions of terms used in this chapter.**

12 For the purposes of this chapter:

13 (a) "Agency" means any state board, commission, department,
14 office or officer authorized by law to make rules or adjudicate
15 contested cases, except those in the legislative or judicial
16 branches;

17 (b) "Contested case" means a proceeding before an agency in
18 which the legal rights, duties, interests or privileges of specific
19 parties are required by law or Constitutional right to be
20 determined after an agency hearing, but does not include cases in
21 which an agency issues a license, permit or certificate after an
22 examination to test the knowledge or ability of the applicant where
23 the controversy concerns whether the examination was fair or
24 whether the applicant passed the examination and ~~shall~~ may not
25 include rule making;

26 (c) "Agency-promulgated rule" means any rule an agency is

1 authorized by the Legislature to promulgate that meets all
2 requirements of being considered a legislative rule except for the
3 authority granted by the Legislature to the agency expressly allows
4 the agency to proceed with final adoption of the rule without prior
5 specific authorization by Legislature rule enactment pursuant to
6 section nine, article three of this chapter. An agency-promulgated
7 rule to be lawfully promulgated shall comport to all other
8 requirements of this article and shall have the same force and
9 effect as a legislative rule.

10 (e) (d) "Interpretive rule" means every rule, ~~as defined in~~
11 ~~subsection (I) of this section,~~ adopted by an agency independently
12 of any delegation of legislative power which is intended by the
13 agency to provide information or guidance to the public regarding
14 the agency's interpretations, policy or opinions upon the law
15 enforced or administered by it and which is not intended by the
16 agency to be determinative of any issue affecting private rights,
17 privileges or interests. An interpretive rule may not be relied
18 upon to impose a civil or criminal sanction nor to regulate private
19 conduct or the exercise of private rights or privileges nor to
20 confer any right or privilege provided by law and is not admissible
21 in any administrative or judicial proceeding for such purpose,
22 except where the interpretive rule established the conditions for
23 the exercise of discretionary power as herein provided. However, an
24 interpretive rule is admissible for the purpose of showing that the
25 prior conduct of a person was based on good faith reliance on such
26 rule. The admission of such rule in no way affects any legislative

1 or judicial determination regarding the prospective effect of such
2 rule. Where any provision of this code lawfully commits any
3 decision or determination of fact or judgment to the sole
4 discretion of any agency or any executive officer or employee, the
5 conditions for the exercise of that discretion, to the extent that
6 such conditions are not prescribed by statute or by legislative
7 rule, may be established by an interpretive rule and such rule is
8 admissible in any administrative or judicial proceeding to prove
9 such conditions.

10 ~~(d)~~ (e) "Legislative rule" means every rule, ~~as defined in~~
11 ~~subsection (I) of this section~~ proposed or promulgated by an agency
12 pursuant to this chapter. Legislative rule includes every rule
13 which, when promulgated after or pursuant to authorization of the
14 Legislature, has: (1) The force of law; (2) supplies a basis for
15 the imposition of civil or criminal liability; or (3) grants or
16 denies a specific benefit. Every rule which, when effective, is
17 determinative on any issue affecting private rights, privileges or
18 interests is a legislative rule. Unless lawfully promulgated as an
19 emergency rule, a legislative rule is only a proposal by the agency
20 and has no legal force or effect until promulgated by specific
21 authorization of the Legislature. Except where otherwise
22 specifically provided in this code, legislative rule does not
23 include: (A) Findings or determinations of fact made or reported by
24 an agency, including any such findings and determinations as are
25 required to be made by any agency as a condition precedent to
26 proposal of a rule to the Legislature; (B) declaratory rulings

1 issued by an agency pursuant to ~~the provisions of~~ section one,
2 article four of this chapter; (C) orders, as defined in ~~subdivision~~
3 ~~(e)~~ of this section; or (D) executive orders or proclamations by
4 the Governor issued solely in the exercise of executive power,
5 including executive orders issued in the event of a public disaster
6 or emergency;

7 ~~(e)~~ (f) "Order" means the, whole or any part, of the final
8 disposition (whether affirmative, negative, injunctive or
9 declaratory in form) by any agency of any matter other than rule
10 making;

11 ~~(f)~~ (g) "Person" includes individuals, partnerships,
12 corporations, associations or public or private organizations of
13 any character;

14 ~~(g)~~ (h) "Procedural rule" means every rule, ~~as defined in~~
15 ~~subsection (I) of this section,~~ which fixes rules of procedure,
16 practice or evidence for dealings with or proceedings before an
17 agency, including forms prescribed by the agency;

18 ~~(h)~~ (i) "Proposed rule" is a legislative rule, interpretive
19 rule, or a procedural rule which has not become effective pursuant
20 to ~~the provisions of~~ this chapter or law authorizing its
21 promulgation;

22 (j) "Provisional legislative rule" means a legislative rule
23 that the agency has been directed by law to propose, to be
24 effective for a limited time as a legislative rule prior to
25 legislative authorization for promulgation as a legislative rule,
26 pursuant to this chapter.

1 ~~(i)~~ (k) "Rule" includes every regulation, standard or
2 statement of policy or interpretation of general application and
3 future effect, including the amendment or repeal thereof, affecting
4 private rights, privileges or interests, or the procedures
5 available to the public, adopted by an agency to implement, extend,
6 apply, interpret or make specific the law enforced or administered
7 by it or to govern its organization or procedure, but does not
8 include regulations relating solely to the internal management of
9 the agency, nor regulations of which notice is customarily given to
10 the public by markers or signs, nor mere instructions. Every rule
11 shall be classified as "legislative rule," "interpretive rule" or
12 "procedural rule," all as defined in this section, and shall be
13 effective only as provided in this chapter;

14 ~~(j)~~ (l) "Rule making" means the process for the formulation,
15 amendment or repeal of a rule as provided in this chapter.

16 **§29A-1-3. Application of chapter; limitations.**

17 ~~(a) The provisions of this chapter do~~ This chapter does not
18 apply in any respect whatever to executive orders of the Governor,
19 which orders to the extent otherwise lawful shall be effective
20 according to their terms: *Provided*, That the executive orders
21 shall be admitted to record in the State Register when and to the
22 extent the Governor ~~deems~~ considers suitable and shall be included
23 therein by the Secretary of State when tendered by the Governor.

24 (b) Except as to requirements for filing in the State
25 Register, and with the Legislature or its rule-making review
26 committee, provided in this chapter or other law, ~~the provisions of~~

1 ~~this chapter do~~ this chapter does not apply in any respect ~~whatever~~
2 to the West Virginia Board of Probation and Parole, the Public
3 Service Commission, the Board of Public Works sitting as such and
4 the Secondary Schools Activities Commission. ~~—Provided, That~~ The
5 rules of ~~such~~ these agencies shall be filed in the State Register
6 in the form prescribed by this chapter and be effective no sooner
7 than sixty consecutive days after being so filed ~~—Provided,~~
8 ~~however, That~~ The rules promulgated by the state colleges and
9 universities shall only be filed with the higher education
10 governing boards. ~~—Provided further, That Such~~ These agencies may
11 promulgate emergency rules in conformity with section fifteen,
12 article three of this chapter. Rules or amendments thereto
13 authorized by this subsection shall be considered by the agency for
14 adoption not later than six months after the close of public
15 comment. A notice of adoption or withdrawal by the agency shall be
16 filed in the State Register within that period. Failure to file
17 such notice shall constitute withdrawal. The Secretary of State
18 shall note such withdrawal in the State Register immediately upon
19 the expiration of the six- month period.

20 (c) ~~The provisions of this chapter do~~ This chapter does not
21 apply to rules relating to or contested cases involving the conduct
22 of inmates or other persons admitted to public institutions, the
23 open seasons and the bag, creel, size, age, weight and sex limits
24 with respect to the wildlife in this state, or the conduct of
25 persons in military service. or the receipt of public assistance.
26 ~~Such~~ These rules shall be filed in the State Register in the form

1 prescribed by this chapter and be effective upon filing: Provided,
2 That rules relating to the receipt of public assistance shall be
3 subject to section one-c, article three of this chapter.

4 (d) Nothing herein shall be construed to affect, limit or
5 expand any express and specific exemption from this chapter
6 contained in any other statute relating to a specific agency, but
7 such exemptions shall be construed and applied in accordance with
8 ~~the provisions of this chapter to effectuate any limitations on~~
9 such exemptions contained in any such other statute.

10 **ARTICLE 3. RULE MAKING.**

11 **§29A-3-1a. Filing proposed amendments to an existing rule.**

12 ~~(a) Rules promulgated to amend existing rules may be filed on~~
13 ~~a section by section basis without having to refile in the state~~
14 ~~register all of the other sections of an existing series numbered~~
15 ~~rule: Provided, That such filing shall list, by proper citation,~~
16 ~~those sections, not amended, which are directly affected by those~~
17 ~~sections amended: Provided, however, That amendments so filed When~~
18 ~~amending an existing rule or proposing a new rule, agencies shall~~
19 ~~file all sections of the proposed rule. Each amendment filed to an~~
20 ~~existing rule shall be accompanied by note of explanation as to the~~
21 effect of such amendment and its relation to the existing rules.

22 ~~(b) Rules promulgated to amend existing rules and filed as an~~
23 ~~emergency rule may be filed on a section by section basis without~~
24 ~~having to refile in the state register all of the other sections of~~
25 ~~an existing series numbered rule: Provided, That such filing shall~~

1 ~~list, by proper citation, those sections not amended, which are~~
2 ~~directly affected by those sections amended.~~

3 (b) Any rule being repealed shall be filed in its entirety
4 with the rule series provisions stricken. A rule may not be
5 repealed by reference in another rule.

6 **§29A-3-1c. Rules of the Department of Health and Human Services.**

7 (a) The Secretary of the Department of Health and Human
8 Services as authorized by this section, other statute or
9 legislative rule, may publish manuals that provide policy guidance
10 for the implementation and administration of agency programs.
11 Manuals are considered agency-promulgated rules as defined pursuant
12 to this article.

13 (b) Notwithstanding section eight, article two of this
14 chapter, the Secretary of the Department of Health and Human
15 Services may make manuals available to the public in an electronic
16 format. Upon the effective date of the manual or any amendment
17 thereto, the secretary shall provide an electronic copy of policy
18 manual to the Secretary of State at no cost. Each manual will be
19 considered addendums to the code of state rules, and electronically
20 published as part of the State Register. This manual shall be
21 noticed in the State Register pursuant to article two of this
22 chapter and subject to thirty day public notice and comment period
23 pursuant to section five of this article.

24 (c) The following Department of Health and Human Services
25 manuals are agency-promulgated rules, and subject to this section:
26 Bureau for Child Support Enforcement Policy Manual; Income

1 Maintenance Manual; West Virginia Medicaid Provider Manuals;
2 Medicaid State Plan Manual; and the Social Services Manual.

3 **§29A-3-4. Filing of proposed agency-promulgated rules,**
4 **procedural rules and interpretive rules.**

5 (a) When an agency proposes ~~a~~ an agency-promulgated rule,
6 procedural rule or an interpretive rule, the agency shall file in
7 the State Register a notice of its action, including the text of
8 the rule as proposed.

9 (b) All proposed rules filed under subsection (a) of this
10 section shall have a fiscal note attached itemizing the cost of
11 implementing the rules as they relate to this state and to persons
12 affected by the rules. ~~and regulations.~~ Such fiscal note shall
13 include all information included in a fiscal note for either house
14 of the Legislature and a statement of the economic impact of the
15 rule on the state or its residents. The objectives of the rules
16 shall be clearly and separately stated in the fiscal note by the
17 agency issuing the proposed rules. No agency-promulgated rule,
18 procedural or interpretive rule shall be void or voidable by virtue
19 of noncompliance with this subsection.

20 **§29A-3-6. Filing findings and determinations for rules in State**
21 **Register; evidence deemed public record.**

22 (a) Incident to fixing a date for public comment on a proposed
23 rule, the agency shall promulgate the findings and determinations
24 required as a condition precedent thereto, and state fully and
25 succinctly the reasons therefor and file such findings and

1 determinations in the State Register. If the agency amends the
2 proposed rule as a result of the evidence or comment presented
3 pursuant to section five, such amendment shall be filed with a
4 description of any changes and a statement listing the reasons for
5 the amendment. The agency shall also provide an analysis of the
6 comments received and the reasons for adoption or rejection of any
7 suggested revisions submitted as comments to the proposed rule.

8 (b) The statement of reasons and a transcript of all evidence
9 and public comment received pursuant to notice are public records
10 and shall be carefully preserved by the agency and be open for
11 public inspection and copying for a period of not less than five
12 years from the date of the hearing.

13 **§29A-3-8. Adoption of agency-promulgated rules, procedural and**
14 **interpretive rules.**

15 A An agency-promulgated, procedural and interpretive rule,
16 shall be considered by the agency for adoption not later than six
17 months after the close of public comment and a notice of withdrawal
18 or adoption shall be filed in the State Register within that
19 period. Failure to file such notice shall constitute withdrawal
20 and the Secretary of State shall note such failure in the State
21 Register immediately upon the expiration of the six- month period.

22 A An agency-promulgated, procedural or interpretive rule may
23 be amended by the agency prior to final adoption without further
24 hearing or public comment. No such amendment may change the main
25 purpose of the rule. If the fiscal implications have changed since
26 the rule was proposed, a new fiscal note shall be attached to the

1 notice of filing. Upon adoption of the rule, (including any such
2 amendment,) the agency shall file the text of the adopted agency-
3 promulgated, procedural or interpretive rule with its notice of
4 adoption in the State Register and the same shall be effective on
5 the date specified in the rule or thirty days after such filing,
6 whichever is later.

7 **§29A-3-9a. Proposal and promulgation of provisional legislative**
8 **rules.**

9 (a) Unless otherwise specified in the implementing statute,
10 whenever the Legislature enacts a law mandating an agency to
11 propose a legislative rule, and further directs the agency to
12 promulgate a provisional legislative rule, the agency shall within
13 sixty days of the effective date of the statute, file the rule for
14 public notice as provided in section five of this article and also
15 submit the rule as a legislative rule as provided pursuant to the
16 requirements of this article. The provisional legislative rule
17 shall be filed by the agency as provided in section six of this
18 article no later than thirty days following the close of public
19 comment. The rule is effective upon final filing by the agency.
20 The provisional legislative rule shall remain effective for fifteen
21 months or until the legislative rule is acted upon by enactment of
22 the Legislature pursuant to section thirteen of this article,
23 whichever occurs first. Any amendment by the agency to the
24 provisional legislative rule is subject to the same notice and
25 effective date requirements. Amendments to the provisional
26 legislative rule do not alter the initial fifteen month effective

1 period for the provisional legislative rule. If the provisional
2 legislative rule expires due to the failure of legislative
3 authorization pursuant to section thirteen of this article, the
4 agency may not refile the same or similar rule as an emergency rule
5 or a provisional legislative rule.

6 (b) A provisional legislative rule may be disapproved by the
7 Secretary of State, acting under the authority provided in section
8 fifteen-a of this article, or the Attorney General, acting under
9 the authority provided in section fifteen-b of this article.

10 **§29A-3-15. Emergency legislative rules; procedure for**
11 **promulgation; definition.**

12 (a) Any agency with authority to propose legislative rules
13 may, ~~without hearing,~~ find that an emergency exists requiring that
14 emergency rules be promulgated and promulgate the same in
15 accordance with this section. Such emergency rules, together with
16 a statement of the facts and circumstances constituting the
17 emergency, and a listing of state agencies, professions, businesses
18 and other identifiable interest groups affected by the proposed
19 emergency rule shall be filed with the Secretary of State, and a
20 notice of such filing shall be published in the State Register:
21 Provided, That failure to list all known state agencies,
22 professions, businesses and other identifiable interest groups may
23 not be the basis for disapproval of the rule or subject the rule to
24 judicial review. The agency shall have a thirty day public comment
25 period for a proposed emergency rule, beginning the day of filing.
26 Upon closure of the public hearing, the ~~Such emergency rules~~ rule

1 shall become effective upon the approval of the Secretary of State
2 in accordance with section fifteen-a of this article or upon the
3 approval of the Attorney General in accordance with section
4 fifteen-b or upon the ~~forty-second~~ forty-fifth day following such
5 filing, whichever occurs first: Provided, however, That at upon a
6 finding that the emergent circumstances existing pursuant to
7 subsection (f) of this section require immediate authorization of
8 the emergency rule, the Secretary of State, acting under the
9 authority provided in section fifteen-a of this article, or the
10 Attorney General, acting under the authority provided in section
11 fifteen-b of this article, may immediately approve the emergency
12 rule for the remainder of the forty-five day comment and review
13 period, at which time that approval of the emergency rule will
14 expire. Any time following the close of public hearing, the final
15 determination on the existence of an emergency may be made by the
16 Secretary of State, acting under the authority provided in section
17 fifteen-a of this article, or the Attorney General, acting under
18 the authority provided in section fifteen-b of this article. Such
19 Emergency rules may adopt, amend or repeal any legislative rule,
20 but the circumstances constituting the emergency requiring such
21 adoption, amendment or repeal shall be stated with particularity
22 and be subject to de novo review by any court having original
23 jurisdiction of an action challenging their validity. ~~Fourteen~~ Two
24 paper copies and an electronic version of the rules and of the
25 required statement shall be filed immediately with the Secretary of
26 State and one paper copy and an electronic copy shall be filed

1 immediately with the Legislative Rule-Making Review Committee.

2 An emergency rule shall be effective for not more than fifteen
3 months and shall expire earlier if any of the following occurs:

4 (1) The Secretary of State, acting under the authority
5 provided for in section fifteen-a of this article, or the Attorney
6 General, acting under the authority provided in section fifteen-b
7 of this article, disapproves the emergency rule because: (A) The
8 emergency rule or an amendment to the emergency rule exceeds the
9 scope of the law authorizing or directing the promulgation thereof;
10 (B) an emergency does not exist justifying the promulgation of the
11 emergency rule; or (C) the emergency rule was not promulgated in
12 compliance with ~~the provisions of~~ this section. An emergency rule
13 may not be disapproved pursuant to the authority granted by
14 paragraphs (A) or (B) of this subdivision on the basis that the
15 Secretary of State or the Attorney General disagrees with the
16 underlying public policy established by the Legislature in enacting
17 the supporting legislation. An emergency rule which would otherwise
18 be approved as being necessary to comply with a time limitation
19 established by this code or by a federal statute or regulation may
20 not be disapproved pursuant to the authority granted by paragraphs
21 (A) or (B) of this subdivision on the basis that the agency has
22 failed to file the emergency rule prior to the date fixed by such
23 time limitation. ~~When the supporting statute specifically directs~~
24 ~~an agency to promulgate an emergency rule, or specifically finds~~
25 ~~that an emergency exists and directs the promulgation of an~~
26 ~~emergency rule, the emergency rule may not be disapproved pursuant~~

1 ~~to the authority granted by paragraph (B) of this subdivision.~~ An
2 emergency rule may not be disapproved on the basis that the
3 Legislature has not specifically directed an agency to promulgate
4 the emergency rule, or has not specifically found that an emergency
5 exists and directed the promulgation of an emergency rule.

6 (2) The agency has not previously filed and fails to file a
7 notice of public hearing on the proposed rule within thirty days of
8 the date the proposed rule was filed as an emergency rule; in which
9 case the emergency rule expires on the thirty-first day.

10 (3) The agency has not previously filed and fails to file the
11 proposed rule with the Legislative Rule-Making Review Committee
12 within ninety days of the date the proposed rule was filed as an
13 emergency rule; in which case the emergency rule expires on the
14 ninety-first day.

15 (4) The Legislature has authorized or directed promulgation of
16 an authorized legislative rule dealing with substantially the same
17 subject matter since such emergency rule was first promulgated, and
18 in which case the emergency rule expires on the date the authorized
19 rule is made effective.

20 (5) The Legislature has, by law, disapproved of such emergency
21 rule; in which case the emergency rule expires on the date the law
22 becomes effective.

23 (b) Any amendment to an emergency rule made by the agency
24 shall be filed in the State Register and does not constitute a new
25 emergency rule for the purpose of acquiring additional time or
26 avoiding the expiration dates in subdivision (2), (3), (4) or (5),

1 subsection (a) of this section: *Provided*, That such emergency
2 amendment shall become effective upon the approval of the Secretary
3 of State in accordance with section fifteen-a of this article or
4 upon approval of the Attorney General in accordance with section
5 fifteen-b of this article or upon the ~~forty-second~~ forty-fifth day
6 following such filing, whichever occurs first.

7 (c) Once an emergency rule expires due to the conclusion of
8 fifteen months or due to the effect of subdivision (2), (3), (4) or
9 (5), subsection (a) of this section, the agency may not refile the
10 same or similar rule as an emergency rule.

11 (d) ~~The provision of this section shall~~ This section may not
12 be used to avoid or evade any provision of this article or any
13 other provisions of this code, including any provisions for
14 legislative review and approval of proposed rules. Any emergency
15 rule promulgated for any such purpose may be contested in a
16 judicial proceeding before a court of competent jurisdiction.

17 (e) The Legislative Rule-Making Review Committee may review
18 any emergency rule to determine: (1) Whether the emergency rule or
19 an amendment to the emergency rule exceeds the scope of the law
20 authorizing or directing the promulgation thereof; (2) whether
21 there exists an emergency justifying the promulgation of such
22 emergency rule; and (3) whether the emergency rule was promulgated
23 in compliance with the requirements and prohibitions contained in
24 this section. The committee may recommend to the agency, the
25 Legislature, or the Secretary of State such action as it may ~~deem~~
26 consider proper.

1 (f) For the purposes of this section, an emergency exists when
2 the promulgation of an emergency rule is necessary: (1) For the
3 immediate preservation of the public peace, health, safety or
4 welfare; (2) to comply with a time limitation established by this
5 code or by a federal statute or regulation; or (3) to prevent
6 substantial harm to the public interest.

7 **§29A-3-15a. Disapproval of emergency and provisional legislative**
8 **rules by the Secretary of State; judicial review.**

9 (a) Upon the filing of an emergency rule or filing of an
10 amendment to an emergency rule by an agency, under ~~the provisions~~
11 ~~of~~ section fifteen of this article, by any agency, except for the
12 Secretary of State, the Secretary of State shall review such rule
13 or such amendment and, within ~~forty-two~~ forty-five days of such
14 filing, shall issue a decision as to whether or not such emergency
15 rule or such amendment to an emergency rule should be disapproved.
16 An emergency rule filed by the Secretary of State shall be reviewed
17 by the Attorney General as provided in section fifteen-b of this
18 article.

19 (b) The Secretary of State shall disapprove an emergency rule
20 or an amendment to an emergency rule if he or she determines:

21 (1) That the emergency rule or an amendment to the emergency
22 rule exceeds the scope of the law authorizing or directing the
23 promulgation thereof; or

24 (2) That an emergency does not exist justifying the
25 promulgation of the emergency rule or the filing of an amendment to
26 the emergency rule; or

1 (3) That the emergency rule or an amendment to the emergency
2 rule was not promulgated in compliance with ~~the provisions of~~
3 section fifteen of this article.

4 (c) If the Secretary of State determines, based upon the
5 contents of the rule or the supporting information filed by the
6 agency, that the emergency rule should be disapproved, he or she
7 may disapprove such rule without further investigation, notice or
8 hearing. If, however, the Secretary of State concludes that the
9 information submitted by the agency is insufficient to allow a
10 proper determination to be made as to whether the emergency rule
11 should be disapproved, he or she may make further investigation,
12 including, but not limited to, requiring the agency or other
13 interested parties to submit additional information or comment or
14 fixing a date, time and place for the taking of evidence on the
15 issues involved in making a determination under ~~the provisions of~~
16 this section.

17 (d) If the Secretary of State determines, based upon the
18 contents of the amendment to an emergency rule or the supporting
19 information filed by the agency, that the amendment to the
20 emergency rule should be disapproved, he or she may disapprove such
21 amendment without further investigation, notice or hearing. If,
22 however, the Secretary of State concludes that the information
23 submitted by the agency is insufficient to allow a proper
24 determination to be made as to whether the amendment should be
25 disapproved, he or she may make further investigation, including,
26 but not limited to, requiring the agency or other interested

1 parties to submit additional information or comment or fixing a
2 date, time and place for the taking of evidence on the issues
3 involved in making a determination under the ~~provisions of this~~
4 section.

5 (e) The Secretary of State shall disapprove a provisional
6 legislative rule upon a finding that the rule was unlawfully
7 promulgated or that the provisional legislative rule or an
8 amendment thereto exceeds the scope of the law authorizing the
9 rule's promulgation.

10 ~~(e)~~ (f) The determination of the Secretary of State shall be
11 reviewable by the Supreme Court of Appeals under its original
12 jurisdiction, based upon a petition for a writ of mandamus,
13 prohibition or certiorari, as appropriate. Such proceeding may be
14 instituted by:

15 (1) The agency which promulgated the emergency rule;

16 (2) A member of the Legislature; or

17 (3) Any person whose personal property interests will be
18 significantly affected by the approval or disapproval of the
19 emergency rule by the Secretary of State.

20 **§29A-3-15b. Disapproval of emergency rules and provisional**
21 **legislative rules by the Attorney General;**
22 **judicial review.**

23 (a) Upon the filing of an emergency rule or filing of an
24 amendment to an emergency rule by the Secretary of State under ~~the~~
25 ~~provisions of~~ section fifteen of this article, the Attorney General

1 shall review such rule or such amendment and, within ~~forty-two~~
2 forty-five days of such filing, shall issue a decision as to
3 whether or not such emergency rule or such amendment to an
4 emergency rule should be disapproved.

5 (b) The Attorney General shall disapprove an emergency rule or
6 an amendment to an emergency rule if he or she determines:

7 (1) That the emergency rule or an amendment to the emergency
8 rule exceeds the scope of the law authorizing or directing the
9 promulgation thereof; or

10 (2) That an emergency does not exist justifying the
11 promulgation of the emergency rule or the filing of an amendment to
12 the emergency rule; or

13 (3) That the emergency rule or an amendment to the emergency
14 rule was not promulgated in compliance with ~~the provisions of~~
15 section fifteen of this article.

16 (c) If the Attorney General determines, based upon the
17 contents of the rule or the supporting information filed by the
18 Secretary of State, that the emergency rule should be disapproved,
19 he or she may disapprove such rule without further investigation,
20 notice or hearing. If, however, the Attorney General concludes
21 that the information submitted by the Secretary of State is
22 insufficient to allow a proper determination to be made as to
23 whether the emergency rule should be disapproved, he or she may
24 make further investigation, including, but not limited to,
25 requiring the Secretary of State or other interested parties to
26 submit additional information or comment or fixing a date, time and

1 place for the taking of evidence on the issues involved in making
2 a determination under ~~the provisions of~~ this section.

3 (d) If the Attorney General determines, based upon the
4 contents of the amendment to an emergency rule or the supporting
5 information filed by the agency, that the amendment to the
6 emergency rule should be disapproved, he or she may disapprove such
7 amendment without further investigation, notice or hearing. If,
8 however, the Attorney General concludes that the information
9 submitted by the agency is insufficient to allow a proper
10 determination to be made as to whether the amendment should be
11 disapproved, he or she may make further investigation, including,
12 but not limited to, requiring the agency or other interested
13 parties to submit additional information or comment or fixing a
14 date, time and place for the taking of evidence on the issues
15 involved in making a determination under ~~the provisions of~~ this
16 section.

17 (e) The Attorney General shall disapprove a provisional
18 legislative rule upon a finding that the rule was unlawfully
19 promulgated or that the provisional legislative rule or an
20 amendment thereto exceeds the scope of the law authorizing the
21 rule's promulgation.

22 ~~(e)~~ (f) The determination of the Attorney General shall be
23 reviewable by the Supreme Court of Appeals under its original
24 jurisdiction, based upon a petition for a writ of mandamus,
25 prohibition or certiorari, as appropriate. Such proceeding may be
26 instituted by:

- 1 (1) The Secretary of State;
- 2 (2) A member of the Legislature; or
- 3 (3) Any person whose personal property interests will be
- 4 significantly affected by the approval or disapproval of the
- 5 emergency rule by the Attorney General.