

FILED

2015 MAR 31 A 11: 28

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015

OFFICE WEST VIRGINIA
SECRETARY OF STATE



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 140

(SENATORS SNYDER, ROMANO AND
FACEMIRE, *ORIGINAL SPONSORS*)

[PASSED MARCH 13, 2015; IN EFFECT FROM PASSAGE.]

SB 140

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Senate Bill No. 140

(SENATORS SNYDER, ROMANO AND
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[Passed March 13, 2015; in effect from passage.]

AN ACT to repeal §29A-2-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §29A-1-2 of said code; to amend said code by adding thereto two new sections, designated §29A-1-3a and §29A-1-3b; and to amend and reenact §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 of said code, all relating generally to the State Administrative Procedures Act; defining “legislative exempt rule”; providing certain technical amendments; providing for nullification and voiding of rules; setting forth requirements for amendments to existing rules, proposed new rules and repeal of existing rules; establishing filing and adoption requirements for legislative exempt rules; making legislative rules effective upon filing; requiring agency to provide list of interested parties with emergency rules; and changing number of copies required when filing an emergency rule.

Be it enacted by the Legislature of West Virginia:

That §29A-2-8 of the Code of West Virginia, 1931, as amended, be repealed; that §29A-1-2 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §29A-1-3a and §29a-1-3b; and that §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

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

1 For the purposes of this chapter:

2 (a) "Agency" means any state board, commission,
3 department, office or officer authorized by law to make rules
4 or adjudicate contested cases, except those in the legislative
5 or judicial branches.

6 (b) "Contested case" means a proceeding before an
7 agency in which the legal rights, duties, interests or privileges
8 of specific parties are required by law or constitutional right
9 to be determined after an agency hearing, but does not
10 include cases in which an agency issues a license, permit or
11 certificate after an examination to test the knowledge or
12 ability of the applicant where the controversy concerns
13 whether the examination was fair or whether the applicant
14 passed the examination and does not include rulemaking.

15 (c) "Interpretive rule" means every rule, as defined in
16 subdivision (j) of this section, adopted by an agency
17 independently of any delegation of legislative power which
18 is intended by the agency to provide information or guidance
19 to the public regarding the agency's interpretations, policy or
20 opinions upon the law enforced or administered by it and
21 which is not intended by the agency to be determinative of
22 any issue affecting constitutional, statutory or common law

23 rights, privileges or interests. An interpretive rule may not be
24 relied upon to impose a civil or criminal sanction nor to
25 regulate conduct or the exercise of constitutional, statutory or
26 common law rights or privileges nor to confer any right or
27 privilege provided by law and is not admissible in any
28 administrative or judicial proceeding for that purpose, except
29 where the interpretive rule established the conditions for the
30 exercise of discretionary power as provided in this
31 subdivision. However, an interpretive rule is admissible for
32 the purpose of showing that the prior conduct of a person was
33 based on good faith reliance on the rule. The admission of the
34 rule in no way affects any legislative or judicial
35 determination regarding the prospective effect of the rule.
36 Where any provision of this code lawfully commits any
37 decision or determination of fact or judgment to the sole
38 discretion of any agency or any executive officer or
39 employee, the conditions for the exercise of that discretion,
40 to the extent that the conditions are not prescribed by statute
41 or by legislative rule, may be established by an interpretive
42 rule and such rule is admissible in any administrative or
43 judicial proceeding to prove the conditions.

44 (d) "Legislative exempt rule" means every rule
45 promulgated by an agency or relating to a subject matter that
46 is exempt from the rule-making provisions of article three of
47 this chapter, under section three, article one of this chapter or
48 any other section of this code.

49 (e) "Legislative rule" means every rule, as defined in
50 subdivision (j) of this section, proposed or promulgated by an
51 agency pursuant to this chapter. Legislative rule includes
52 every rule which, when promulgated after or pursuant to
53 authorization of the Legislature, has: (1) The force of law; or
54 (2) supplies a basis for the imposition of civil or criminal
55 liability; or (3) grants or denies a specific benefit. Every rule
56 which, when effective, is determinative on any issue affecting

57 constitutional, statutory or common law rights, privileges or
58 interests is a legislative rule. Unless lawfully promulgated as
59 an emergency rule, a legislative rule is only a proposal by the
60 agency and has no legal force or effect until promulgated by
61 specific authorization of the Legislature. Except where
62 otherwise specifically provided in this code, legislative rule
63 does not include: (A) Findings or determinations of fact made
64 or reported by an agency, including any findings and
65 determinations that are required to be made by any agency as
66 a condition precedent to proposal of a rule to the Legislature;
67 (B) declaratory rulings issued by an agency pursuant to the
68 provisions of section one, article four of this chapter; (C)
69 orders, as defined in subdivision (e) of this section; or (D)
70 executive orders or proclamations by the Governor issued
71 solely in the exercise of executive power, including executive
72 orders issued in the event of a public disaster or emergency.

73 (f) "Order" means the whole or any part of the final
74 disposition, whether affirmative, negative, injunctive or
75 declaratory in form, by any agency of any matter other than
76 rulemaking.

77 (g) "Person" includes individuals, partnerships,
78 corporations, associations or public or private organizations
79 of any character.

80 (h) "Procedural rule" means every rule, as defined in
81 subdivision (j) of this section, which fixes rules of procedure,
82 practice or evidence for dealings with or proceedings before
83 an agency, including forms prescribed by the agency.

84 (i) "Proposed rule" is a legislative rule, interpretive rule
85 or a procedural rule which has not become effective pursuant
86 to the provisions of this chapter or law authorizing its
87 promulgation.

88 (j) "Rule" includes every rule, standard or statement of
89 policy or interpretation of general application and future
90 effect, including the amendment or repeal of the rule,
91 affecting constitutional, statutory or common law rights,
92 privileges or interests, or the procedures available to the
93 public, adopted by an agency to implement, extend, apply,
94 interpret or make specific the law enforced or administered
95 by it or to govern its organization or procedure, but does not
96 include rules relating solely to the internal management of the
97 agency, nor rules of which notice is customarily given to the
98 public by markers or signs, nor mere instructions. Every rule
99 shall be classified as "legislative rule", "interpretive rule" or
100 "procedural rule", all as defined in this section, and is
101 effective only as provided in this chapter.

102 (k) "Rulemaking" means the process for the formulation,
103 amendment or repeal of a rule as provided in this chapter.

§29A-1-3a. Technical amendments to a current rule.

1 The provisions of this chapter do not apply to purely
2 technical amendments to a current rule, including correcting
3 addresses, phone numbers, punctuation, spelling, code
4 citations or internal citations, numbering, grammatical errors
5 or changes to language to standardize rules generally without
6 affecting the content of any rule. An agency may make these
7 amendments by filing the corrected rule with the Secretary of
8 State's office.

§29A-1-3b. Void rules.

1 If an agency ceases to exist, through the operation of law
2 or by statute, any rules adopted or promulgated by the agency
3 are void on the date the agency ceases to exist, unless the
4 agency's rule-making power and its rules have been
5 transferred to another agency.

ARTICLE 3. RULEMAKING.

§29A-3-1a. Filing proposed amendments to an existing rule; and repealing an existing rule.

1 (a) An agency shall file all sections of the proposed rule
2 when proposing an amendment to an existing rule. The
3 proposed rule shall be accompanied by note of explanation as
4 to the effect of the amendment and its relation to the existing
5 rules.

6 (b) An agency proposing to repeal a rule, shall file the
7 rule in its entirety with the provisions of the rule struck
8 through. An agency may not repeal a rule by reference in
9 another rule.

§29A-3-4. Filing of proposed legislative exempt rules, procedural rules and interpretive rules.

1 (a) When an agency proposes a legislative exempt rule,
2 procedural rule or an interpretive rule, the agency shall file in
3 the State Register a notice of its action, including the text of
4 the rule as proposed.

5 (b) All proposed rules filed under subsection (a) of this
6 section shall have a fiscal note attached itemizing the cost of
7 implementing the rules as they relate to this state and to
8 persons affected by the rules. The fiscal note shall include all
9 information included in a fiscal note for either house of the
10 Legislature and a statement of the economic impact of the
11 rule on the state or its residents. The objectives of the rule
12 shall be clearly and separately stated in the fiscal note by the
13 agency issuing the proposed rules. A legislative exempt,
14 procedural or interpretive rule is not void or voidable by
15 virtue of noncompliance with this subsection.

§29A-3-8. Adoption of legislative exempt, procedural and interpretive rules.

1 An agency shall consider a legislative exempt, procedural
2 and interpretive rule for adoption not later than six months
3 after the close of public comment and file a notice of
4 withdrawal or adoption in the State Register within that
5 period. An agency's failure to file the notice constitutes
6 withdrawal and the Secretary of State shall note the failure in
7 the State Register immediately upon the expiration of the
8 six-month period.

9 A legislative exempt, procedural or interpretive rule may
10 be amended by the agency prior to final adoption without
11 further hearing or public comment. The amendment may not
12 change the main purpose of the rule. If the fiscal implications
13 have changed since the rule was proposed, the agency shall
14 attach a new fiscal note to the notice of filing. Upon adoption
15 of the rule, including any amendment, the agency shall file
16 the text of the adopted legislative exempt, procedural or
17 interpretive rule with its notice of adoption in the State
18 Register and the rule is effective on the date specified in the
19 rule or thirty days after the filing, whichever is later or as
20 specified in this code.

§29A-3-13. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise
2 provide, within sixty days after the effective date of an act
3 authorizing promulgation of a legislative rule, the agency
4 shall promulgate the rule in conformity with the provisions of
5 law authorizing and directing the promulgation of the rule.
6 In the case of a rule proposed by an agency which is
7 administered by an executive department pursuant to the
8 provisions of article two, chapter five-f of this code, the
9 secretary of the department shall promulgate the rule as
10 authorized by the Legislature. In the case of an agency which
11 is not subject to administration by the secretary of an
12 executive department, the agency which proposed the rule for

13 promulgation shall promulgate the rule as authorized by the
14 Legislature.

15 (b) A legislative rule authorized by the Legislature is
16 effective upon filing in the State Register, or on the effective
17 date fixed by the authorizing act or, if none is fixed by law,
18 a later date not to exceed ninety days, as fixed by the agency.

19 (c) The Secretary of State shall note in the State Register
20 the effective date of an authorized and promulgated
21 legislative rule and shall promptly publish the duly
22 promulgated rule in the Code of State Rules maintained by
23 his or her office.

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

1 (a) Any agency with authority to propose legislative rules
2 may, without hearing, find that an emergency exists requiring
3 that an emergency rule be promulgated and promulgate the
4 emergency rule in accordance with this section. The agency
5 shall file the emergency rule, together with a statement of the
6 facts and circumstances constituting the emergency and a
7 listing of state agencies, professions, businesses and other
8 identifiable interest groups affected by the proposed
9 emergency rule, with the Secretary of State, who shall
10 publish a notice of the filing in the State Register. However,
11 an agency's good faith failure to list all known state agencies,
12 professions, businesses and other identifiable interest groups
13 is not a basis for disapproval of the emergency rule or does
14 not subject the emergency rule to judicial review. The
15 emergency rule becomes effective upon the approval of the
16 Secretary of State in accordance with section fifteen-a of this
17 article or upon the approval of the Attorney General in
18 accordance with section fifteen-b of this article or upon the
19 forty-second day following the filing, whichever occurs first.

20 The emergency rule may adopt, amend or repeal any
21 legislative rule, but the agency shall state, with particularity,
22 the circumstances constituting the emergency requiring the
23 adoption, amendment or repeal, and the emergency rule is
24 subject to de novo review by any court having original
25 jurisdiction of an action challenging its validity. An agency
26 shall immediately file a copy of the emergency rule and the
27 required statement with the Secretary of State and one copy
28 with the Legislative Rule-Making Review Committee.

29 An emergency rule is effective for not more than fifteen
30 months and expires earlier if any of the following occurs:

31 (1) The Secretary of State, acting under the authority
32 provided in section fifteen-a of this article, or the Attorney
33 General, acting under the authority provided in section
34 fifteen-b of this article, disapproves the emergency rule
35 because: (A) The emergency rule or an amendment to the
36 emergency rule exceeds the scope of the law authorizing or
37 directing the promulgation of the rule; (B) an emergency does
38 not exist justifying the promulgation of the emergency rule;
39 or (C) the emergency rule was not promulgated in
40 compliance with the provisions of this section. An
41 emergency rule may not be disapproved pursuant to the
42 authority granted by clauses (A) or (B) of this subdivision on
43 the basis that the Secretary of State or the Attorney General
44 disagrees with the underlying public policy established by the
45 Legislature in enacting the authorizing legislation. An
46 emergency rule which would otherwise be approved as being
47 necessary to comply with a time limitation established by this
48 code or by a federal statute or regulation may not be
49 disapproved pursuant to the authority granted by paragraphs
50 (A) or (B) of this subdivision on the basis that the agency has
51 failed to file the emergency rule prior to the date fixed by the
52 time limitation. When the authorizing statute specifically
53 directs an agency to promulgate an emergency rule, or

54 specifically finds that an emergency exists and directs the
55 promulgation of an emergency rule, the emergency rule may
56 not be disapproved pursuant to the authority granted by
57 paragraph (B) of this subdivision. An emergency rule may
58 not be disapproved on the basis that the Legislature has not
59 specifically directed an agency to promulgate the emergency
60 rule, or has not specifically found that an emergency exists
61 and directed the promulgation of an emergency rule;

62 (2) The agency has not previously filed and fails to file a
63 notice of public hearing on the proposed rule within thirty
64 days of the date the proposed rule was filed as an emergency
65 rule, in which case the emergency rule expires on the
66 thirty-first day;

67 (3) The agency has not previously filed and fails to file
68 the proposed rule as approved by the agency following the
69 close of the public comment period with the Legislative
70 Rule-Making Review Committee within ninety days of the
71 date the proposed rule was filed as an emergency rule, in
72 which case the emergency rule expires on the ninety-first
73 day;

74 (4) The Legislature has authorized or directed
75 promulgation of an authorized legislative rule dealing with
76 substantially the same subject matter since the emergency
77 rule was first promulgated, in which case the emergency rule
78 expires on the date the authorized rule is made effective; or

79 (5) The Legislature has, by law, disapproved the
80 emergency rule, in which case the emergency rule expires on
81 the date the law becomes effective.

82 (b) Any amendment to an emergency rule made by the
83 agency shall be filed in the State Register and does not
84 constitute a new emergency rule for the purpose of acquiring

85 additional time or avoiding the expiration dates in
86 subdivision (2), (3), (4) or (5), subsection (a) of this section:
87 *Provided*, That the emergency amendment becomes effective
88 upon the approval of the Secretary of State in accordance
89 with section fifteen-a of this article or upon approval of the
90 Attorney General in accordance with section fifteen-b of this
91 article or upon the forty-second day following the filing,
92 whichever occurs first.

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

97 (d) An agency may not use the provisions of this section
98 to avoid or evade any provision of this article or any other
99 provisions of this code, including any provisions for
100 legislative review and approval of proposed rules. Any
101 emergency rule promulgated for that purpose may be
102 contested in a judicial proceeding before a court of competent
103 jurisdiction.

104 (e) The Legislative Rule-Making Review Committee may
105 review any emergency rule to determine: (1) Whether the
106 emergency rule or an amendment to the emergency rule
107 exceeds the scope of the law authorizing or directing its
108 promulgation; (2) whether there exists an emergency
109 justifying the promulgation of the emergency rule; and (3)
110 whether the emergency rule was promulgated in compliance
111 with the requirements and prohibitions contained in this
112 section. The committee may recommend to the agency, the
113 Legislature or the Secretary of State any action it determines
114 appropriate.

115 (f) For the purposes of this section, an emergency exists
116 when the promulgation of an emergency rule is necessary: (1)

117 For the immediate preservation of the public peace, health,
118 safety or welfare; (2) to comply with a time limitation
119 established by this code or by a federal statute or regulation;
120 or (3) to prevent substantial harm to the public interest.

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

Mark W. Hayward
.....
Chairman Senate Committee

John B. Hill
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Clark S. Barnes
.....
Clerk of the Senate

Steph J. Harris
.....
Clerk of the House of Delegates

Millie Pollock
.....
President of the Senate

Charles P. Miller
.....
Speaker of the House of Delegates

The within is approved this the *3/8*
Day of *March*, 2015.

Carl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:15 pm