WEST VIRGINIA CODE: §29A-1-2

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

For the purposes of this chapter:

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

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

(c) "Interpretive rule" means every rule, as defined in subdivision (j) of this section, adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the agency to be determinative of any issue affecting constitutional, statutory or common law rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor to regulate conduct or the exercise of constitutional, statutory or common law rights or privileges nor to confer any right or privilege provided by law and is not admissible in any administrative or judicial proceeding for that purpose, except where the interpretive rule established the conditions for the exercise of discretionary power as provided in this subdivision. However, an interpretive rule is admissible for the purpose of showing that the prior conduct of a person was based on good faith reliance on the rule. The admission of the rule in no way affects any legislative or judicial determination regarding the prospective effect of the rule. Where any provision of this code lawfully commits any decision or determination of fact or judgment to the sole discretion of any agency or any executive officer or employee, the conditions for the exercise of that discretion, to the extent that the conditions are not prescribed by statute or by legislative rule, may be established by an interpretive rule and such rule is admissible in any administrative or judicial proceeding to prove the conditions.

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

(e) "Legislative rule" means every rule, as defined in subdivision (j) of this section, proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the Legislature, has: (1) The

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force of law; or (2) supplies a basis for the imposition of civil or criminal liability; or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting constitutional, statutory or common law rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the Legislature. Except where otherwise specifically provided in this code, legislative rule does not include: (A) Findings or determinations of fact made or reported by an agency, including any findings and determinations that are required to be made by any agency as a condition precedent to proposal of a rule to the Legislature; (B) declaratory rulings issued by an agency pursuant to the provisions of section one, article four of this chapter; (C) orders, as defined in subdivision (e) of this section; or (D) executive orders or proclamations by the Governor issued solely in the exercise of executive power, including executive orders issued in the event of a public disaster or emergency.

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

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

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

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

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

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

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