WEST VIRGINIA CODE: §29A-3A-16

§29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.

(a) The agency may, without hearing, find that an emergency exists requiring that an emergency rule be promulgated and promulgate the emergency rule in accordance with this section. The agency shall file the emergency rule, together with a statement of the facts and circumstances constituting the emergency and a listing of state institutions of higher education, agencies, professions, businesses, and other identifiable interest groups affected by the proposed emergency rule, in the State Register. The agency's good faith failure to list all known state institutions of higher education, agencies, professions, businesses, and other identifiable interest groups is not a basis for disapproval of the emergency rule, nor does it subject the emergency rule to judicial review. The emergency rule becomes effective upon the approval of the Secretary of State in accordance with §29A-3A-16a of this code or upon the 42nd day following the filing, whichever occurs first. The emergency rule may adopt, amend, or repeal any legislative rule, but the agency shall state with particularity the circumstances constituting the emergency requiring the adoption, amendment, or repeal, and the emergency rule is subject to de novo review by any court having original jurisdiction of an action challenging its validity. The agency shall immediately file a copy of the emergency rule and the required statement with the Secretary of State and the Legislative Oversight Commission on Education Accountability.

(b) An emergency rule is effective for not more than 15 months and expires earlier if any of the following occurs:

(1) The Secretary of State, acting under the authority provided for in §29A-3A-16a of this code, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation of the rule; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. An emergency rule may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the Secretary of State disagrees with the underlying public policy established by the Legislature in enacting the authorizing legislation. An emergency rule which would otherwise be approved as being necessary to comply with a time limitation established by this code or by a federal statute or regulation may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the agency has failed to file the emergency rule prior to the date fixed by the time limitation. When the authorizing statute specifically directs the agency to promulgate an emergency rule, or specifically finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved on the basis that the Legislature has not specifically directed the agency to promulgate the emergency rule or has not specifically found that an emergency

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exists and directed the promulgation of an emergency rule;

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within 30 days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the 31st day;

(3) The agency has not previously filed and fails to file the proposed rule as approved by the agency following the close of the public comment period with the Legislative Oversight Commission on Education Accountability within 90 days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the 91st day;

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

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

(c) Any amendment to an emergency rule made by the agency shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (b) of this section: *Provided*, That the emergency amendment becomes effective upon the approval of the Secretary of State in accordance with section §29A-3-16a of this code or upon the 42nd day following the filing, whichever occurs first.

(d) Once an emergency rule expires due to the conclusion of 15 months or because of subdivision (2), (3), (4) or (5), subsection (b) of this section, the agency may not refile the same or similar rule as an emergency rule.

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

(f) The Legislative Oversight Commission on Education Accountability may review any emergency rule to determine: (1) Whether the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of the emergency rule; and (3) whether the emergency rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the agency, the Legislature, or the Secretary of State any action it determines appropriate.

(g) For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary: (1) For the immediate preservation of the public peace, health,

WV Legislature

safety or welfare; (2) to comply with a time limitation established by this code or by a federal statute or regulation; or (3) to prevent substantial harm to the public interest.

WV Legislature