WEST VIRGINIA CODE CHAPTER 29a ARTICLE 1

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§29A-1-1. Legislative findings and statement of purpose.

The Legislature finds and declares that administrative law and the administrative practice and procedure of the various executive and administrative officers, offices and agencies comprises a body of law and policy which is voluminous, often formulated without adequate public participation and collected and preserved for public knowledge and use in an unacceptable and essentially inaccessible fashion. The Legislature further finds that the delegation of its legislative powers to other departments and agencies of government requires of the Legislature that the rules and regulations of such other departments and agencies, which have the force and effect of law because of their legislative character, should be carefully and extensively reviewed by the Legislature in a manner properly respectful of the separation of powers but in keeping with the legislative force and effect of such rules and regulations. Accordingly the Legislature has and by this chapter intends to fix by law uniform and settled administrative practices and procedures, subject only to enumerated exceptions, for the exercise of executive rule- making authority and for the exercise by executive and administrative officers, offices and agencies of lawfully delegated legislative power, with appropriate legislative review of that exercise of such delegated legislative authority and with established procedures for Legislative Oversight of the exercise of executive rule-making authority.

In that light chapter twenty-nine-a of this code establishes, with enumerated exceptions, procedures for rule making, declaratory rulings by agencies and the conduct of contested administrative cases, together with a plan for the systematic preparation, public consideration, orderly promulgation, preservation and public availability of the body of law, policy and administrative decisions within the purview of this chapter.

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§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 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

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

(a) The provisions of this chapter do not apply in any respect whatever to executive orders of the Governor, which orders to the extent otherwise lawful shall be effective according to their terms: Provided, That the executive orders shall be admitted to record in the state register when and to the extent the Governor deems suitable and shall be included therein by the Secretary of State when tendered by the Governor.

(b) Except as to requirements for filing in the state register, and with the Legislature or its rule-making review committee, provided in this chapter or other law, the provisions of this chapter do not apply in any respect whatever to the West Virginia board of probation and parole, the Public Service Commission, the board of public works sitting as such and the secondary schools activities commission: Provided, That rules of such agencies shall be filed in the state register in the form prescribed by this chapter and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That the rules promulgated by the state colleges and universities shall only be filed with the higher education governing boards: Provided further, That such agencies may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

(c) The provisions of this chapter do not apply to rules relating to or contested cases involving the conduct of inmates or other persons admitted to public institutions, the open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance. Such rules shall be filed in the state register in the form prescribed by this chapter and be effective upon filing.

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

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

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

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§29A-1-3b. Void rules.

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

(b) Upon repeal or elimination of a statute that provides rule-making authority, any rule adopted or promulgated by the agency pursuant to that statute is void.

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§29A-1-4. Application of open governmental proceedings law.

(a) All meetings of an agency, board or commission of the executive branch of government or of the legislative rule-making review committee which may only be convened upon the presence of a required quorum, and which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of a rule, as defined in subsection (i), section two of this article, are subject to the open governmental proceedings law as set forth in article nine-a, chapter six of this code, except as may otherwise be provided for in this section.

(b) When an agency, board or commission is considering the form and substance of a rule or proposed rule, the informal occurrence of (1) consultations between the governing members of the agency, board or commission and its staff members, (2) deliberations by the governing members, or (3) the engagement of a governing member or members in the process of making a decision, does not constitute a meeting within the meaning of article nine-a, chapter six of this code when, during such stages, neither a quorum nor the convening of the governing members of the agency, board or commission is required.

(c) When the legislative rule-making review committee is considering the form and substance of a rule or proposed rule, the informal occurrence of (1) consultations between the members of the committee and its staff members, (2) deliberations by the governing members, or (3) the engagement of a governing member or members in the process of making a decision, does not constitute a meeting within the meaning of article nine-a, chapter six of this code when, during such stages, neither a quorum nor the convening of the members of the committee is required.

(d) After public hearing or the close of the public comment period, during which hearing or period an agency, board or commission has received statements concerning the form and substance of a rule or proposed rule, the agency, board or commission shall not permit the filing or receipt of, nor shall it consider, any attempted ex parte communications directed to it in the form of additional comment, prior to the submission of its final agency-approved rule to the legislative rule-making review committee pursuant to the provisions of section eleven, article three of this chapter. Nothing contained herein shall prohibit the agency, board or commission from soliciting or receiving information relating to the rule or proposed rule from the federal government, from the Legislature or its members, or from another agency, board or commission of the executive branch of the government of this state.

(e) After a proposed rule is approved for submission and is submitted to the legislative rule-making review committee pursuant to the provisions of section eleven, article three of this chapter, the right of the people to assemble, to petition government, to consult for the common good, to instruct their representatives, and to apply for redress of grievances, in accordance with the provisions of section sixteen, article III of the Constitution, shall reserve to a person the right to freely communicate, ex parte or otherwise, with the agency, board or commission or the legislative rule-making review committee in attempts to influence deliberations or decision-making regarding the form and substance of the proposed rule

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prior to authorization being granted for promulgation of the rule.

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