WEST VIRGINIA CODE CHAPTER 29a ARTICLE 2

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§29A-2-1. Duty of the Secretary of State.

It is the nondiscretionary, nondelegable duty of the Secretary of State to establish and maintain the state register hereby created, and offer copies for subscription and public distribution in accordance with the provisions of this article.

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§29A-2-2. State register created.

There is hereby created in the office of the Secretary of State, a public record to be known and denominated as the state register, to be established, compiled, indexed and copied, and such copies offered for subscription and distribution, in accordance with the provisions of this article.

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§29A-2-3. Contents of state register.

The Secretary of State shall receive and file in the state register:

(a) Every notice of a proposed rule or a public hearing for the finding of facts or public comment on a proposed rule.

(b) The text of every proposed rule and subsequent proposed amendment thereto and fiscal notes attached thereto.

(c) Every determination of fact or judgment tendered by an agency for inclusion therein and every notice of submission to the Legislature or its rule-making review committee made in conformity with this chapter.

(d) Every executive order tendered by the Governor.

(e) Every notice of and the text of any report or finding of the legislative rule-making review committee and such other material as may be tendered by the clerk or presiding officer of either house of the Legislature for filing in the state register.

(f) Such other material related to administrative procedures and actions as an agency may desire to make a public record or the Secretary of State may deem appropriate, or where required by law.

(g) Notice of and the text of any action by an agency of the Legislature or its committees relative to the process of promulgation of rules tendered to the Secretary of State for inclusion in the register.

(h) Every other paper required by law to be filed in such register or which may be filed therein in order to comply with any other provision of law.

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§29A-2-4. Contents of state register deemed a public record.

Every paper filed in the state register shall be a public record provable and admissible as evidence if otherwise relevant, of which judicial notice may be taken, either under lawful certification or by reason of duplication and distribution as a copy of the state register in accordance with this article.

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§29A-2-5. Agency rules to be filed in state register; failure to file.

(a) Notwithstanding any filing prior to the effective date of this section, each agency shall hereafter file in the state register a certified copy of all of its lawfully adopted rules which are in force on the date of such filing and all of its proposed rules which have not become effective prior to the date of such filing. All such rules and proposed rules shall be arranged, compiled, numbered and indexed in accordance with the provisions of section six of this article, and shall also include a designation of each rule as either legislative rule, interpretive rule or procedural rule. Any agency desiring to pursue promulgation of a rule proposed prior to the effective date of this section but not then yet effective, shall refile such proposed rule, following the procedure set forth in article three: Provided, That it shall not be necessary for the agency to again hold a public hearing to determine facts or public comment, but in all other respects the procedures provided for the promulgation of rules under this section shall be complied with. On or before January 1, 1983, any other agency required by law to file its rules in the state register in order for such rules to be effective shall resubmit and refile such rules in accordance with this section. If any agency fails to file a certified copy of any rule or proposed rule in accordance with this section on or before January 1, 1983, then such rule or proposed rule not so filed shall be thereafter void and unenforceable and shall be of no further force and effect except as to enforcement of its effective provisions for actions, causes or matters occurring prior to January 1, 1983.

(b) Except for such changes in the designation and numbering of a rule, including numerical references within a rule, as are required to comply with the provisions of section six of this article, no legislative rule filed under the provisions of this section may be amended in any way prior to such filing unless such amendment is made in compliance with the requirements of article three of this chapter.

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§29A-2-6. Format and numbering of agency rules filed in State Register; electronic filing required beginning July 1, 2011; pilot project.

(a) Each proposed rule filed by an agency requiring a notice to be published in the state Register in accordance with the provisions of section five, article three of this chapter shall include as its initial provisions: (1) A statement identifying such rule as a legislative rule, an interpretive rule or a procedural rule, as the case may be; (2) a statement of such section, article and chapter of this code to which such rule or any part thereof relates; and (3) a statement of the section, article and chapter of this code or any other provision of law which provides authority for the promulgation of such rule. The agency shall be estopped from relying on any authority for the promulgation of such rule which is not stated therein in accordance with the requirements of this subdivision.

(b) Each rule when filed, to be finally effective, shall have attached thereto an abstract of its promulgation history prepared by the agency showing the date of the filing in the state Register of the content of, or notice of any procedure relating to, action necessary under this chapter to cause such rules to be finally effective: Provided, That any error or omission in such abstract shall not affect the validity of any rule or action in respect thereto.

(c) The Secretary of State shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the state Register, and may prescribe procedural or interpretive rules to clarify and interpret the provisions in this section. The Secretary of State shall refuse to accept for filing any rules which do not comply with the specific provisions of this section. The Secretary of State may also refuse to accept any rules which do not comply with the rules issued pursuant to this section.

(d) Unless and until the Secretary of State prescribes otherwise by rule issued and made effective under the provisions of subsection (c) of this section, each rule filed in paper form in the state Register shall be on white paper measuring eight and one-half inches by eleven inches, typewritten and single-spaced, with a one inch margin at the top, bottom and each side of each page, and shall be reproduced photographically, or by xerography or other duplication process. The Secretary of State may grant specific exceptions to such requirements in the case of maps, diagrams and exhibits, if the same may not be conveniently folded and fastened with the other pages of rules and in the case of rules which incorporate a rule or regulation of a federal agency or other organization which could not be submitted in the standard size and format except at undue expense. Materials submitted for inclusion in the state Register shall be fastened on the left side by two or more fasteners attached through holes suitable for insertion into ring binders.

(e)(1) Beginning July 1, 2011, unless otherwise authorized by the Secretary of State, all agencies, boards and commissions having rulemaking authority, shall file the provisions of and attachments to all proposed rules required to be filed with the Secretary of State, and any associated documents that are required to be published in the state Register, exclusively in a electronic format. The Secretary of State may exempt an agency, board or commission from this requirement upon the Secretary of State's determination that the filer is without

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the means to electronically file the documents and to require electronic filing would place an unreasonable burden on the agency, board or commission.

(2) On or before July 1, 2010, the Secretary of State shall propose for promulgation legislative rules to establish a uniform system for the electronic filing required by the provisions of this section and to otherwise implement those provisions.

(3) During the calendar year 2010, through procedural rules, the Secretary of State may institute a limited pilot project through which proposed new rules or amendments to existing rules may be filed electronically by any agency, board or commission under agreement with the Secretary of State. Participation by any agency, board or commission in the pilot project is voluntary.

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§29A-2-7. Publication of State Register.

(a) The Legislature intends that the Secretary of State offer to the public access to the State Register and Code of State Rules. The State Register, the Code of State Rules and other documents produced by the Secretary of State's office shall be available in electronic format on the Secretary of State's website.

(b) All materials filed in the State Register shall be indexed as quickly as possible in chronological order of filing with a brief description of the item filed and a columnar cross index to:

(1) Agency;

(2) Code citation to which it relates and by which it is filed in the State Register; and

(3) Other information in the description or cross index as the Secretary of State believes will aid a person in using the index.

(c) The Secretary of State shall post on the website with each update of the Code of State Rules, a copy of the rule monitor and its cross index which shows the rules that have become effective, and a table showing rules which are out for public comment, and agency-approved, modified and emergency rules.

(d) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of article three of this chapter, to change the procedures outlined in this section.

(e) One half of all the fees and amounts collected for the sale of the State Register, the Code of State Rules and other copies or data provided by the Secretary of State shall be deposited in the State General Revenue Fund and one half of the fees in the service fees and collections account established in accordance with subsection (f), section two, article one, chapter fifty-nine of this code for the operations of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(f) A person who is unable to access electronic versions of documents may review the documents at the office of the Secretary of State, or may request a printed copy at a cost which is sufficient, in the judgment of the Secretary of State, to defray the expenses of publication, including labor, paper and postage: Provided, That the Secretary of State may waive the fee.

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§29A-2-8.

Repealed.

Acts, 2015 Reg. Sess., Ch. 9.

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§29A-2-9. Making orders and records available.

Every agency shall file in the state register all final orders, decisions and opinions in the adjudication of contested cases except those required for good cause to be held confidential and not cited as precedent. Except as otherwise required by statute, matters of official record shall be made available for public inspection pursuant to rules adopted in accordance with the provisions of this chapter.

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