

No. 1868

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

RECEIVED  
1985 MAY -3 AM 10:44  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

— ● —

## ENROLLED

Com. Sub. for  
HOUSE BILL No. 1868.....

(By Mr. Del. Casey.....)

— ● —

Passed ..... April 13, ..... 1985

In Effect ..... From ..... Passage

# ENROLLED

## COMMITTEE SUBSTITUTE

### FOR

# H. B. 1868

(By DELEGATE CASEY)

---

[Passed April 13, 1985; in effect from passage.]

---

AN ACT to amend and reenact sections eight and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to administrative procedures; rule making; emergency rules; and changing effective period of emergency rules.

*Be it enacted by the Legislature of West Virginia:*

That sections eight and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### ARTICLE 3. RULE MAKING.

##### §29A-3-8. Adoption of procedural and interpretive rules.

1 A procedural and interpretive rule shall be considered by  
2 the agency for adoption not later than six months after the  
3 close of public comment and a notice of withdrawal or  
4 adoption shall be filed in the state register within that period.  
5 Failure to file such notice shall constitute withdrawal and the  
6 secretary of state shall note such failure in the state register  
7 immediately upon the expiration on the six-month period.

8 A procedural or interpretive rule may be amended by the  
9 agency prior to final adoption without further hearing or  
10 public comment. No such amendment may change the main

11 purpose of the rule. If the fiscal implications have changed  
12 since the rule was proposed, a new fiscal note shall be attached  
13 to the notice of filing. Upon adoption of the rule (including  
14 any such amendment) the agency shall file the text of the  
15 adopted procedural or interpretive rule with its notice of  
16 adoption in the state register and the same shall be effective  
17 on the date specified in the rule or thirty days after such filing,  
18 whichever is later.

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

1 (a) Any agency with authority to propose legislative rules  
2 may, without hearing, find that an emergency exists requiring  
3 that emergency rules be promulgated and promulgate the same  
4 in accordance with this section. Such emergency rules, together  
5 with a statement of the facts and circumstances constituting  
6 the emergency, shall be filed in the state register and shall  
7 become effective immediately upon such filing. Such emer-  
8 gency rules may adopt, amend or repeal any legislative rule  
9 but the circumstances constituting the emergency requiring  
10 such adoption, amendment or repeal shall be stated with  
11 particularity and be subject to de novo review by any court  
12 having original jurisdiction of an action challenging their  
13 validity. Fifteen copies of the rules and of the required  
14 statement shall be filed forthwith with the legislative rule-  
15 making review committee.

16 An emergency rule shall be effective for not more than  
17 fifteen months and shall expire earlier if any of the following  
18 occurs:

19 (1) The agency has not previously filed and fails to file a  
20 notice of public hearing on the proposed rule within sixty days  
21 of the date the proposed rule was filed as an emergency rule;  
22 in which case the emergency rule expires on the sixty-first day.

23 (2) The agency has not previously filed and fails to file the  
24 proposed rule with the legislative rule-making review  
25 committee within one hundred eighty days of the date the  
26 proposed rule was filed as an emergency rule; in which case  
27 the emergency rule expires on the one hundred eighty-first day.

28 (3) The Legislature has authorized or directed promulgation  
29 of an authorized legislative rule dealing with substantially the  
30 same subject matter since such emergency rule was first

31 promulgated, and in which case the emergency rule expires on  
32 the date the authorized rule is made effective.

33 (4) The Legislature has, by law, disapproved of such  
34 emergency rule; in which case the emergency rule expires on  
35 the date the law becomes effective.

36 (b) Any amendments to an emergency rule made by the  
37 agency shall be filed in the state register and does not  
38 constitute a new emergency rule for the purpose of acquiring  
39 additional time or avoiding the expiration dates in subdivision  
40 (1), (2), (3) or (4), subsection (a) of this section.

41 (c) Once an emergency rule expires due to the conclusion  
42 of fifteen months or due to the effect of subdivision (1), (2),  
43 (3) or (4), subsection (a) of this section, the agency may not  
44 refile the same or similar rule as an emergency rule.

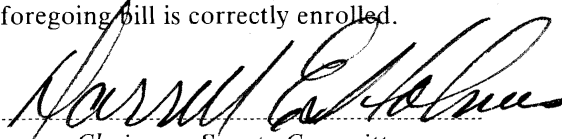
45 (d) Emergency legislative rules currently in effect under the  
46 prior provisions of this section may be refiled under the  
47 provisions of this section.

48 (e) The provisions of this section shall not be used to avoid  
49 or evade any provision of this article or any other provisions  
50 of this code, including any provisions for legislative review and  
51 approval of proposed rules. Any emergency rule promulgated  
52 for any such purpose may be contested in a judicial proceeding  
53 before a court of competent jurisdiction.

54 (f) The legislative rule-making review committee may review  
55 any emergency rule to determine (1) whether the agency has  
56 exceeded the scope of its statutory authority in promulgating  
57 the emergency rule; (2) whether there exists an emergency  
58 justifying the promulgation of such rule; and (3) whether the  
59 rule was promulgated in compliance with the requirements and  
60 prohibitions contained in this section. The committee may  
61 recommend to the agency or the Legislature such action as it  
62 may deem proper.

63 (g) For the purposes of this section, an emergency exists  
64 when the promulgation of a rule is necessary for the immediate  
65 preservation of the public peace, health, safety or welfare or  
66 is necessary to comply with a time limitation established by  
67 this code or by a federal statute or regulation or to prevent  
68 substantial harm to the public interest.

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

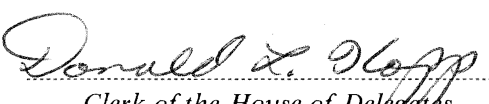
  
Chairman Senate Committee

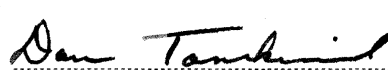
  
Chairman House Committee

Originating in the House.

Takes effect from passage.

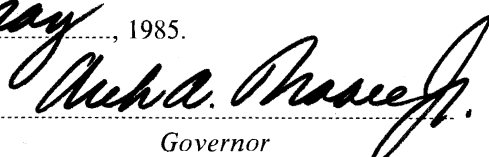
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within  this the   
day of , 1985.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/19/85

Time

8:40 p.m.