WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

Com. Sub. for
HOUSE BILL No. 1868

(By Mr. Del. Casey)

Passed ________________ - 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 the agency for adoption not later than six months after the close of public comment and a notice of withdrawal or adoption shall be filed in the state register within that period.

2. Failure to file such notice shall constitute withdrawal and the secretary of state shall note such failure in the state register immediately upon the expiration on the six-month period.

3. A procedural or interpretive rule may be amended by the agency prior to final adoption without further hearing or public comment. No such amendment may change the main
purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment) the agency shall file the text of the adopted procedural or interpretive rule with its notice of adoption in the state register and the same shall be effective on the date specified in the rule or thirty days after such filing, whichever is later.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

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

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

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

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

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

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

(b) Any amendments 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
(1), (2), (3) or (4), subsection (a) of this section.

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

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

(e) The provisions of this section shall not be used 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 any such purpose may be contested in a judicial proceeding
before a court of competent jurisdiction.

(f) The legislative rule-making review committee 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 such rule; and (3) whether the
rule was promulgated in compliance with the requirements and
prohibitions contained in this section. The committee may
recommend to the agency or the Legislature such action as it
can deem proper.

(g) For the purposes of this section, an emergency exists
when the promulgation of a rule is necessary for the immediate
preservation of the public peace, health, safety or welfare or
is necessary to comply with a time limitation established by
this code or by a federal statute or regulation or to prevent
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 4/15/85

Time 8:46 p.m.