WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
SENATE BILL NO. 484

(By Senator R. Williams)

PASSED March 8, 1986
In Effect from Passage
ENROLLED
Senate Bill No. 434
(BY SENATOR R. WILLIAMS)

[Passed March 8, 1986; in effect from passage.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six and nine, article two of said chapter twenty-nine-a; to amend and reenact sections nine, eleven, twelve and fifteen, article three of said chapter; to further amend said article three by adding thereto a new section, designated section fifteen-a; to amend and reenact sections sixteen (two-d) (eight), seventeen-a (two) (nine), twenty (one) (seven), twenty (five-e) (six), twenty (five-e) (seven), twenty-three (one) (thirteen) and thirty (three) (seven), article two, chapter sixty-four of said code, as amended; and that said article two be further amended by adding thereto nineteen new sections, designated sections ten (one) (eleven), eleven (one-a) (twenty-one), sixteen (four-c) (six), sixteen (five) (nine), sixteen (five-h) (two), sixteen (five-i) (five), sixteen (thirty-one) (four), seventeen-c (sixteen) (four), nineteen (one) (four-b), nineteen (two-f) (six), nineteen (ten-b) (nine), twenty-three (four-b) (six), twenty-nine-a (two) (six), thirty (three) (ten), thirty (three) (sixteen), thirty (thirteen) (five), thirty (twenty-five) (seven), thirty (twenty-six), (three) and thirty (twenty-six) (fifteen), all relating generally to the promulgation of administration rules and regulations by the various executive or administration
agencies of the state and the procedures relating thereto; the manner of proposing a legislative rule; requiring rules promulgated by state colleges and universities be filed with the West Virginia board of regents; requiring the submission of any such legislative rule to the legislative rule-making review committee; deleting special procedures for adopting federal rules by reference; requiring secretary of state to prescribe uniform methods for compiling, numbering and indexing such rules; describing the method and the effect of proposing and filing a legislative rule; providing for the submission of agency-approved rules to the legislative rule-making review committee; describing the procedure to be followed by the legislative rule-making review committee in submitting legislative rules to the legislature; describing the procedure to be followed in promulgating emergency rules; prescribing the period during which emergency rules shall be effective and providing for their earlier expiration under certain conditions; authorizing the secretary of state to disapprove emergency rules not in compliance with statutory law; and providing for judicial review of the determination of the secretary of state as to whether or not an emergency rule should be disapproved; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain such agencies to promulgate certain legislative rules with various modifications; presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-six; authorizing the West Virginia library commission to promulgate certain legislation rules designating a grace period for the return of certain library materials; authorizing the state tax commissioner to promulgate certain legislative rules relative to statewide electronic data processing system to facilitate administration of the ad valorem property tax on real and personal property; authorizing the West Virginia
health care cost review authority to promulgate legislative rules relating to interim standards for lithotripsy services, as directed to be modified by the legislative rule making review committee; authorizing the director of health to promulgate certain legislative rules governing emergency medical services as modified as directed by the legislative rule-making review committee and as later amended; authorizing the director of health to promulgate certain legislative rules relating to adult group home licensure as directed to be modified by the legislative rule-making review committee; authorizing the state board of health to promulgate certain legislative rules relating to the licensure of hospice care programs including modifications thereto; authorizing the state department of health to promulgate certain legislative rules revising the list of hazardous substances; authorizing the commissioner of motor vehicles to promulgate legislative rules relating to the reinstatement of driving privileges following suspension or revocation thereof, as, modified; authorizing the commissioner of motor vehicles to promulgate legislative rules relating to the administration and enforcement of motor vehicle inspections; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the increase of certain fees; authorizing the beef industry self-improvement assessment board to promulgate certain legislative rules relating generally to such self-improvement assessment program; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the licensure of livestock dealers, as modified; authorizing the department of natural resources to promulgate certain legislative rules to WV/NPDES regulations for the coal mining point source category and related sewage facilities; authorizing the department of natural resources to promulgate legislative rules relating to hazardous waste management, as modified as well as certain other legislative rules relating to hazardous waste management filed in the office of the secretary of state in the state registry on the fifth day of March, one thousand nine hundred eighty-six; authorizing the department of natural resources to promulgate legislative rules relating to hazardous waste management; small quantity generators and waste minimization certification with certain amendments thereto; authorizing
the department of highways to promulgate certain legislative rules relating to the transportation of hazardous waste by highway transporters, with certain amendments, thereto; authorizing the department of highways to promulgate certain additional legislative rules relating to the transportation of hazardous waste by vehicle upon the roads and highways of this state, with certain amendments thereto; authorizing the workers' compensation commissioner to promulgate certain legislative rules with respect to the administration of the coal-workers pneumoconiosis fund with certain modifications and amendments thereto; authorizing the secretary of state to promulgate certain legislative rules relating to the standard size and format for rules and related documents filed in the office of the secretary of state, with modifications thereto; authorizing the board of medicine to promulgate legislation rules relating to the licensure, disciplinary and complaints procedures with respect to the practice of podiatry and physicians assistants; authorizing the board of medicine to promulgate legislative rules governing the approval of medical schools not accredited by the liaison committee on medical education, with modifications; authorizing the state board of registration for professional engineers to promulgate legislative rules relating to registration for professional engineers, with modifications; authorizing the nursing home administrators licensing board to promulgate legislative rules governing nursing home administrators, with modifications; and authorizing the West Virginia board of hearing aid dealers to promulgate legislative rules governing said board, with modifications.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections six and nine, article two of said chapter twenty-nine-a be amended and reenacted; that sections nine, eleven, twelve and fifteen, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section fifteen-a; that sections sixteen (two-d)(eight), seventeen-a (two)(nine), twenty (one)(seven), twenty (five-e)(six), twenty (five-e)(seven), twenty-three (one)(thirteen) and
thirty (three)(seven), article two, chapter sixty-four of said code, as amended, be amended and reenacted; and that said article two be further amended by adding thereto nineteen new sections, designated sections ten (one)(eleven), eleven (one-a)(twenty-one), sixteen (four-c)(six), sixteen (five)(nine), sixteen (five-h)(two), sixteen (five-i)(five), sixteen (thirty-one)(four), seventeen-c (sixteen)(four), nineteen (one)(four-b), nineteen (two-f)(six), nineteen (ten-b)(nine), twenty-three (four-b)(six), twenty-nine-a (two)(six), thirty (three)(ten), thirty (three)(sixteen), thirty (thirteen)(five), thirty (twenty-five)(seven), thirty (twenty-six)(three) and thirty (twenty-six)(fifteen), all to read as follows:

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

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

1 (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.

2 (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, the West Virginia board of education and the West Virginia board of regents: 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 West Virginia board of regents: 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 public elections, the conduct of inmates or other persons admitted to public institutions, the conduct of students at public schools or public educational 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.

ARTICLE 2. STATE REGISTER.


(a) Each rule or proposed rule filed by an agency in the state register shall include as its initial provision: (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 rule 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 he may prescribe such procedural or interpretive rules as he deems advisable 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, and he may refuse to accept for filing any rules which do not comply with the procedural rules issued by him pursuant to this section until the rules sought to be filed are brought into conformity with the secretary of state's procedural rules.

(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 this 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 to 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 the promulgation 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.


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.
ARTICLE 3. RULE MAKING.


1 When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

2 An agency proposing a legislative rule, other than an emergency rule, shall first file in the state register a notice of its proposal, including the text of the legislative rule and including all materials required in the case of a procedural or interpretive rule. The agency shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including final adoption. In lieu of final adoption, the agency shall approve the rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee.

3 Such approval of the rule by the agency for submission to the Legislature shall be deemed to be approval for submission to the Legislature only and not deemed to give full force and effect until authority to do so is granted by law.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

1 (a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the agency shall submit to the legislative rule-making review committee at its offices or at a regular meeting of such committee fifteen copies of (1) the full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken-through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the
(b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the committee shall recommend that the Legislature:

(1) Authorize the agency to promulgate the legislative rule, or

(2) Authorize the agency to promulgate part of the legislative rule, or

(3) Authorize the agency to promulgate the legislative rule with certain amendments, or

(4) Recommend that the rule be withdrawn.

The committee shall file notice of its action in the state register and with the agency proposing the rule: Provided, That when the committee makes the recommendations of
subdivision (2), (3) or (4) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct its staff or the office of legislative services to draft a bill authorizing the agency to promulgate all or part of the legislative rule, and incorporating such amendments as the committee desires. If the committee recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

1 (a) No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairman of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the committee pursuant to the provisions of section eleven of this article and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to such rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted by the staff of the committee or by legislative services pursuant to section eleven of this article. The cochairman of the committee may also submit such rules at the direction of the committee at any time before or during a special session in which consideration thereof may be appropriate. The committee may refuse to consider and withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred ten days before the end of a regular session. The clerk of each house shall submit the report to his house at the commencement of the next session.
All bills introduced authorizing the promulgation of a rule may be referred by the speaker of the House of Delegates and by the president of the Senate to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may by act authorize the agency to adopt a legislative rule incorporating the entire rule, or may authorize the agency to adopt a rule with any amendments which the Legislature shall designate. The clerk of the house originating such act shall forthwith file a copy of any bill enacted in contemplation of this section in the state register and with the agency proposing such rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during such session for which authority to promulgate was not by law provided during such session.

(b) If the Legislature fails during its regular session to act upon all or part of any legislative rule which was submitted to it by the legislative rule-making review committee during such session, no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so.

(c) Nothing herein shall be construed to prevent the Legislature by law from authorizing or authorizing and directing an agency to promulgate legislative rules not proposed by the agency or upon which some procedure specified in this chapter is not yet complete.

(d) Whenever the Legislature is convened by proclamation of the governor, upon his own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may by act enacted during such extraordinary or extended session authorize, in whole or in part, any legislative rule whether submitted to the legislative rule-making review committee, or not, if legislative action on such rule during such session is a lawful order of business.

(e) Whenever a date is required by this section to be computed in relation to the end of a regular session of the Legislature, such date shall be computed without regard to
any extensions of such session occasioned solely by the 
proclamation of the governor.
(f) Whenever a date is required to be computed from or 
is fixed by the first day of a regular session of the 
Legislature, it shall be computed or fixed in the year one 
thousand nine hundred eighty-four, and each fourth year 
thereafter without regard to the second Wednesday of 
January of such years.

§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 secretary of state, acting under the authority 
provided for in section fifteen-a of this article, disapproves 
the emergency rule because (A) the agency has exceeded the 
scope of its statutory authority in promulgating the 
emergency rule; (B) an emergency does not exist justifying 
the promulgation of such rule; or (C) the rule was not 
promulgated in compliance with the provisions of this 
section.

(2) 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.
(3) 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.

(4) 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.

(5) 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 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 (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, the Legislature, or the secretary of state such action as it may 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.

§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

(a) Upon the filing of an emergency rule by an agency under the provisions of section fifteen of this article, the secretary of state shall review such rule and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule should be disapproved.

(b) The secretary of state shall disapprove an emergency rule if he determines:

(1) That the agency has exceeded the scope of its statutory authority in promulgating the emergency rule;

(2) That an emergency does not exist justifying the promulgation of the rule; or

(3) That the rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the secretary of state determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the secretary of state concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) The determination of the secretary of state shall be reviewable by the supreme court of appeals under its original jurisdiction, based upon a petition for a writ of
mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The agency which promulgated the emergency rule;
(2) A member of the Legislature; or
(3) Any person whose personal or property interests will be significantly affected by the approval or disapproval of the emergency rule by the secretary of state.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-10(1)(11). West Virginia library commission.

The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-five, modified by the West Virginia library commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of November, one thousand nine hundred eighty-five, relating to the West Virginia library commission (designating a grace period for the return of library materials) are authorized.


The legislative rules filed in the state register on the twenty-second day of May, one thousand nine hundred eighty-five, relating to the state tax commissioner (rules governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property) are authorized.

§64-2-16(2d)(8). State board of health; West Virginia health care cost review authority.

(a) The rules authorized by the Legislature in subsection (a), section sixteen (2d)(5) of this article were also proposed by the state board of health pursuant to section eight, article two-d, chapter sixteen of this code.

(b) The legislative rules filed in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-five, modified by the West Virginia health care cost review authority to meet the objections of the legislative
rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia health care cost review authority (interim standards for lithotripsy services) are authorized.

§64-2-16(4c)(6). Director of health.

The legislative rules filed in the state register on the thirty-first day of October, one thousand nine hundred eighty-five, modified by the director of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the director of health (rules governing emergency medical services) are authorized with the amendments set forth below:

On page 3, §3.9 shall read as follows:

"3.9 Quorum — When applied to the EMSAC, a majority of the members thereof, except in the instance when at any meeting of the EMSAC, where a quorum is not present and the director causes to be deposited in the United States mail, postage prepaid, return receipt requested, to each member of the EMSAC within three days, a notice calling a meeting of the EMSAC at some convenient place in the state of West Virginia two weeks after the meeting at which no quorum was present. Quorum means any number of members of the EMSAC who attend such subsequent meeting. Any member missing two consecutive meetings shall be removed from the EMSAC."

On page 6, §4.7.1 shall be deleted in its entirety, and On page 7, §4.10.1 shall read as follows:

"4.10.1 every applicant for certification as an EMSP prior to such certification, shall demonstrate his or her knowledge and ability by undergoing a written examination and a demonstration of skills, and by attaining a passing score on the same. Passing score shall be the same for all testing programs."


The rules promulgated by the Legislature in subsection (a), section sixteen (five-i)(five) of this article were also proposed by the state board of health pursuant to section nine, article five-d, chapter sixteen of this code.
§64-2-16(5h)(2). Director of health.

1. The legislative rules filed in the state register on the seventeenth day of December, one thousand nine hundred eighty-five, modified by the director of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the director of health (adult group home licensure) are authorized.

§64-2-16(5i)(5). State board of health.

1. The legislative rules filed in the state register on the twenty-ninth day of October, one thousand nine hundred eighty-five, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the state board of health (licensure of hospice care programs) are authorized.


1. The legislative rules filed in the state register on the fifth day of September, one thousand nine hundred eighty-five, relating to the state department of health (revising the list of hazardous substances) are authorized.


1. (a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words “licensed in the United States” after the phrase “physician of the applicant’s choice,” on page five, line two, and page seven, line one; and by striking out the words “licensed vision specialist” and inserting in lieu thereof the words “an optometrist or ophthalmologist licensed in the United States,” on page five, line three, and on page seven, line two.

These rules were proposed by the commissioner pursuant to section nine, article two, chapter seventeen-a and section six, article three-c, chapter seventeen-b of this code.
(b) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle) are authorized.

(c) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges) are authorized.


The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (administration and enforcement of motor vehicle inspections) are authorized.


The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, relating to the commissioner of agriculture (increasing certain fees by rules and regulations) are authorized.


The legislative rules filed in the state register on the nineteenth day of April, one thousand nine hundred eighty-five, relating to the beef industry self-improvement assessment board (beef industry self-improvement assessment program) are authorized.


The legislative rules filed in the state register on the thirteenth day of January, one thousand nine hundred eighty-six, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand nine hundred eighty-six,
§64-2-20(1)(7). Department of natural resources.

(a) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-four, relating to the department of natural resources (public use of state parks, forests, hunting and fishing areas) are authorized.

(b) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-five, relating to the department of natural resources (WV/ NPDES regulations for the coal mining point source category and related sewage facilities) are authorized.

§64-2-20(5e)(6). Department of natural resources.

(a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (hazardous waste management) are authorized.

(b) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV) are authorized with the amendments set forth below:

Page 3, §1.06, change the § title from “Enforcement” to “Procedure”; place an “(a)” in front of the existing paragraph and add the following:

“(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in code §20-5E of this regulation. Permit procedures set forth in code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation.”

Such rules shall also include a section which shall read as follows:

“The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information
regarding the commission’s data gathering efforts, the
development of compliance programs, the progress in
implementation, and such other matters as the committee
may require, pertaining to the regulations hereby
authorized."

(c) The legislative rules filed in the state register on the
third day of December, one thousand nine hundred eighty-
four, modified by the department of natural resources to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the thirteenth
day of February, one thousand nine hundred eighty-five,
relating to the department of natural resources (hazardous
waste management), are authorized.

(d) The legislative rules filed in the state register on the
eleventh day of December, one thousand nine hundred
eighty-five, modified by the department of natural
resources to meet the objections of the legislative rule-
making review committee and refiled in the state register on
the twentieth day of February, one thousand nine hundred
eighty-six, relating to the department of natural resources
(hazardous waste management) are authorized.

(e) The legislative rules filed in the state register on the
fifth day of March, one thousand nine hundred eighty-six
relating to the department of natural resources (hazardous
waste management) are authorized.

(f) The legislative rules filed in the state register on the
tenth day of October, one thousand nine hundred eighty-
five, relating to the department of natural resources
(hazardous waste management: small quantity generators
and waste minimization certification) are authorized with
the amendments set forth below:

On page 1, §3.1.4b delete the word “or” in the reference to
paragraph (g) or (j)” and insert in lieu thereof the words
“and, if applicable.”

§64-2-20(5e)(7). Department of highways.

(a) The legislative rules filed in the state register on the
twenty-first day of October, one thousand nine hundred
eighty-three, relating to the commissioner of highways
(transportation of hazardous waste by highway
transporters) are authorized with the amendments set forth
below:
§64-2-23(1)(13). Workers' compensation commissioner.

(a) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four relating to the workers' compensation commissioner (time lists for the administration proceedings of adjudications and awards) are authorized.

(b) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (standards for medical examination in occupational pneumoconiosis claims) are authorized with the amendments set forth below:
On page 1, the second and third unnumbered paragraphs on page one are amended to read as follows:

When two or more ventilatory function tests performed in reasonably close proximity in time produce differing but acceptable results, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional testing at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the results are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.

When blood gas studies are performed and abnormal values are obtained and thereafter new blood gas studies are performed and normal or significantly higher values are further obtained, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional studies at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the values are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.

And on page 7, paragraph (11) is amended to read as follows:

(11) It is recognized that arterial blood gas studies done in laboratories throughout this state are obtained at different altitudes. Only by “standardizing” for altitude can an equitable assessment be made of impairment when values of arterial oxygen are being measured at remarkably different altitudes. Therefore, the results reported from laboratories should include the name of the laboratory and the date and time of the testing, altitude of the laboratory and barometric pressure at the laboratory on the day the samples were collected. The O. P. Board will evaluate the arterial blood gas values by converting those values to the average altitude of Charleston, West Virginia. For this purpose, it shall be sufficient to add 1 mmHg to each arterial oxygen tension for each 300 feet or fraction thereof that the testing laboratory is located above the average altitude of Charleston, because the relationship of barometric pressure (altitude) and alveolar oxygen is
approximately linear up to 4,000 feet as long as the subject breathes room air.

As an example, Bluefield is located approximately 2,600 feet above sea level. Charleston is approximately 600 feet above sea level. Thus, arterial oxygen values obtained in Bluefield should have 6.67 mmHg added to them before applying the table to them to obtain "percent impairment."

The calculations are as follows:

Bluefield (2,600') minus Charleston (600') equals 2,000'

2,000' divided by 300' altitude equals 6.67

6.67 multiplied by 1 mmHg per 300' altitude equals 6.67 mmHg

§64-2-23(4b)(6). Workers' compensation commissioner.

The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred eighty-five, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the workers' compensation commissioner (administration of the coal-workers' pneumoconiosis fund) are authorized.

§64-2-29a(2)(6). Secretary of state.

The legislative rules filed in the state register on the fifteenth day of April, one thousand nine hundred eighty-five, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of October, one thousand nine hundred eighty-five, relating to the secretary of state (standard size and format for rules and related documents filed in the secretary of state's office) are authorized.

§64-2-30(3)(7). Board of medicine.

(a) The legislative rules filed in the state register on the twelfth day of May, one thousand nine hundred eighty-three, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physicians assistants) are authorized with the modifications set forth below:
§24.12. (b) It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before Type A physician assistants employed in a satellite clinic may render general medical or surgical services, except in emergencies.

§24.16. (p) No physician assistant shall render nonemergency outpatient medical services until the patient has been informed that the individual providing care is a physician assistant.”

(b) The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of January, one thousand nine hundred eighty-six, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physicians assistants) are authorized. These rules were proposed by the board of medicine pursuant to sections seven and sixteen, article three, chapter thirty of this code.

§64-2-30(3)(7). West Virginia board of medicine.

The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, modified by the West Virginia board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred eighty-five, relating to the West Virginia board of medicine (rules governing the approval of medical schools not accredited by the liaison committee on medical education) are authorized. These rules were proposed by the West Virginia board of medicine pursuant to sections seven and ten, article three, chapter thirty of this code.

§64-2-30(3)(10). West Virginia board of medicine.

The rules authorized by the Legislature in subsection (a), section thirty (three) (seven) of this article were also proposed by the West Virginia board of medicine pursuant to section ten, article three, chapter thirty of this code.
§64-2-30(3)(16). Board of medicine.

1 The rules authorized by the Legislature in subsection (b), section thirty (three) (seven) of this article were also proposed by the board of medicine pursuant to section sixteen, article three, chapter thirty of this code.

§64-2-30(13)(5). State board of registration for professional engineers.

1 The legislative rules filed in the state register on the twenty-ninth day of November, one thousand nine hundred eighty-five, modified by the state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia board of registration of professional engineers (legislative rules governing the West Virginia state board of registration for professional engineers) are authorized.


1 The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-five, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the nursing home administrators licensing board (governing nursing home administrators) are authorized.


1 The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the West Virginia board of hearing aid dealers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia board of hearing aid dealers (rules governing the West Virginia board of hearing aid dealers) are authorized. These rules were proposed by the West Virginia board of hearing aid dealers.
dealers pursuant to sections three and fifteen, article twenty-six, chapter thirty of this code.


The rules authorized by the Legislature in section thirty (twenty-six) (three) of this article were also proposed by the West Virginia board of hearing aid dealers pursuant to section fifteen, article twenty-six, chapter thirty of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ...................this the ............... day of ............... 1986.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/86
Time 5:14 p.m.