

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



## ENROLLED

SENATE BILL NO. 434

(By Senator.....*R. Williams*.....)



PASSED .....*March 8.*..... 1986

In Effect.....*from*..... Passage



**ENROLLED**  
**Senate Bill No. 434**

(BY SENATOR R. WILLIAMS)

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

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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 legislative 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
- 2 respect whatever to executive orders of the governor, which
- 3 orders to the extent otherwise lawful, shall be effective
- 4 according to their terms: *Provided*, That the executive
- 5 orders shall be admitted to record in the state register when
- 6 and to the extent the governor deems suitable and shall be
- 7 included therein by the secretary of state when tendered by
- 8 the governor.
- 9 (b) Except as to requirements for filing in the state
- 10 register, and with the Legislature or its rule-making review
- 11 committee, provided in this chapter or other law, the
- 12 provisions of this chapter do not apply in any respect
- 13 whatever to the West Virginia board of probation and
- 14 parole, the public service commission, the board of public
- 15 works sitting as such, the West Virginia board of education
- 16 and the West Virginia board of regents: *Provided*, That
- 17 rules of such agencies shall be filed in the state register in
- 18 the form prescribed by this chapter and be effective no
- 19 sooner than sixty consecutive days after being so filed:
- 20 *Provided, however*, That the rules promulgated by the state
- 21 colleges and universities shall only be filed with the West
- 22 Virginia board of regents: *Provided further*, That such
- 23 agencies may promulgate emergency rules in conformity
- 24 with section fifteen, article three of this chapter.

25 (c) The provisions of this chapter do not apply to rules  
26 relating to, or contested cases involving public elections,  
27 the conduct of inmates or other persons admitted to public  
28 institutions, the conduct of students at public schools or  
29 public educational institutions, the open seasons and the  
30 bag, creel, size, age, weight and sex limits with respect to  
31 the wildlife in this state, the conduct of persons in military  
32 service or the receipt of public assistance. Such rules shall  
33 be filed in the state register in the form prescribed by this  
34 chapter and be effective upon filing.

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

## ARTICLE 2. STATE REGISTER.

### §29A-2-6. Format and numbering of agency rules filed in state register.

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

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

21 (c) The secretary of state shall prescribe by legislative  
22 rule a standard size, format, numbering and indexing for  
23 rules to be filed in the state register and he may prescribe  
24 such procedural or interpretive rules as he deems advisable  
25 to clarify and interpret the provisions in this section. The  
26 secretary of state shall refuse to accept for filing any rules  
27 which do not comply with the specific provisions of this  
28 section, and he may refuse to accept for filing any rules  
29 which do not comply with the procedural rules issued by  
30 him pursuant to this section until the rules sought to be filed  
31 are brought into conformity with the secretary of state's  
32 procedural rules.

33 (d) Unless and until the secretary of state prescribes  
34 otherwise by rule issued and made effective under the  
35 provisions of subsection (c) of this section, each rule filed in  
36 this state register shall be on white paper measuring eight  
37 and one-half inches by eleven inches, typewritten and  
38 single-spaced, with a one inch margin to the top, bottom  
39 and each side of each page, and shall be reproduced  
40 photographically, or by xerography or other duplication  
41 process. The secretary of state may grant specific  
42 exceptions to such requirements in the case of maps,  
43 diagrams and exhibits, if the same may not be conveniently  
44 folded and fastened with the other pages of rules and in the  
45 case of rules which incorporate the promulgation of a  
46 federal agency or other organization which could not be  
47 submitted in the standard size and format except at undue  
48 expense. Materials submitted for inclusion in the state  
49 register shall be fastened on the left side by two or more  
50 fasteners attached through holes suitable for insertion into  
51 ring binders.

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

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



**ARTICLE 3. RULE MAKING.****§29A-3-9. Proposal of legislative rules.**

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

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

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

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

1 (a) When an agency finally approves a proposed  
2 legislative rule for submission to the Legislature, pursuant  
3 to the provisions of section nine of this article, the agency  
4 shall submit to the legislative rule-making review  
5 committee at its offices or at a regular meeting of such  
6 committee fifteen copies of (1) the full text of the legislative  
7 rule as finally approved by the agency, with new language  
8 underlined and with language to be deleted from any  
9 existing rule stricken-through but clearly legible; (2) a brief  
10 summary of the content of the legislative rule and a  
11 description and a copy of any existing rule which the agency  
12 proposes to amend or repeal; (3) a statement of the  
13 circumstances which require the rule; (4) a fiscal note  
14 containing all information included in a fiscal note for  
15 either house of the Legislature and a statement of the

16 economic impact of the rule on the state or its residents; and  
17 (5) any other information which the committee may request  
18 or which may be required by law.

19 (b) The committee shall review each proposed  
20 legislative rule and, in its discretion, may hold public  
21 hearings thereon. Such review shall include, but not be  
22 limited to, a determination of:

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

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

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

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

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

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

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

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

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

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

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

54 (4) Recommend that the rule be withdrawn.

55 The committee shall file notice of its action in the state  
56 register and with the agency proposing the rule: *Provided*,  
57 That when the committee makes the recommendations of

58 subdivision (2), (3) or (4) of this subsection, the notice shall  
59 contain a statement of the reasons for such  
60 recommendation.

61 (d) When the committee recommends that a rule be  
62 authorized, in whole or in part, by the Legislature, the  
63 committee shall instruct its staff or the office of legislative  
64 services to draft a bill authorizing the agency to promulgate  
65 all or part of the legislative rule, and incorporating such  
66 amendments as the committee desires. If the committee  
67 recommends that the rule not be authorized, it shall include  
68 in its report a draft of a bill authorizing promulgation of the  
69 rule together with a recommendation. Any draft bill  
70 prepared under this section shall contain a legislative  
71 finding that the rule is within the legislative intent of the  
72 statute which the rule is intended to implement, extend,  
73 apply or interpret and shall be available for any member of  
74 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  
2 each regular session of the Legislature, the cochairman of  
3 the legislative rule-making review committee shall submit  
4 to the clerk of the respective houses of the Legislature  
5 copies of all proposed legislative rules which have been  
6 submitted to and considered by the committee pursuant to  
7 the provisions of section eleven of this article and which  
8 have not been previously submitted to the Legislature for  
9 study, together with the recommendations of the committee  
10 with respect to such rules, a statement of the reasons for any  
11 recommendation that a rule be amended or withdrawn, and  
12 a statement that a bill authorizing the legislative rule has  
13 been drafted by the staff of the committee or by legislative  
14 services pursuant to section eleven of this article. The  
15 cochairman of the committee may also submit such rules at  
16 the direction of the committee at any time before or during a  
17 special session in which consideration thereof may be  
18 appropriate. The committee may refuse to consider and  
19 withhold from its report any proposed legislative rule  
20 which was submitted to the committee fewer than two  
21 hundred ten days before the end of a regular session. The  
22 clerk of each house shall submit the report to his house at  
23 the commencement of the next session.

24 All bills introduced authorizing the promulgation of a  
25 rule may be referred by the speaker of the House of  
26 Delegates and by the president of the Senate to appropriate  
27 standing committees of the respective houses for further  
28 consideration or the matters may be otherwise dealt with as  
29 each house or its rules provide. The Legislature may by act  
30 authorize the agency to adopt a legislative rule  
31 incorporating the entire rule, or may authorize the agency  
32 to adopt a rule with any amendments which the Legislature  
33 shall designate. The clerk of the house originating such act  
34 shall forthwith file a copy of any bill enacted in  
35 contemplation of this section in the state register and with  
36 the agency proposing such rule and the clerk of each house  
37 may prepare and file a synopsis of legislative action during  
38 any session on any proposed rule submitted to the house  
39 during such session for which authority to promulgate was  
40 not by law provided during such session.

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

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

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

63 (e) Whenever a date is required by this section to be  
64 computed in relation to the end of a regular session of the  
65 Legislature, such date shall be computed without regard to

66 any extensions of such session occasioned solely by the  
67 proclamation of the governor.

68 (f) Whenever a date is required to be computed from or  
69 is fixed by the first day of a regular session of the  
70 Legislature, it shall be computed or fixed in the year one  
71 thousand nine hundred eighty-four, and each fourth year  
72 thereafter without regard to the second Wednesday of  
73 January of such years.

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

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

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

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

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

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

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

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

48 (b) Any amendment to an emergency rule made by the  
49 agency shall be filed in the state register and does not  
50 constitute a new emergency rule for the purpose of  
51 acquiring additional time or avoiding the expiration dates  
52 in subdivision (1), (2), (3) or (4), subsection (a) of this section.

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

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

61 (e) The provisions of this section shall not be used to  
62 avoid or evade any provision of this article or any other  
63 provisions of this code, including any provisions for  
64 legislative review and approval of proposed rules. Any  
65 emergency rule promulgated for any such purpose may be  
66 contested in a judicial proceeding before a court of  
67 competent jurisdiction.

68 (f) The legislative rule-making review committee may  
69 review any emergency rule to determine (1) whether the  
70 agency has exceeded the scope of its statutory authority in  
71 promulgating the emergency rule; (2) whether there exists  
72 an emergency justifying the promulgation of such rule; and  
73 (3) whether the rule was promulgated in compliance with  
74 the requirements and prohibitions contained in this section.

75 The committee may recommend to the agency, the  
76 Legislature, or the secretary of state such action as it may  
77 deem proper.

78 (g) For the purposes of this section, an emergency exists  
79 when the promulgation of a rule is necessary for the  
80 immediate preservation of the public peace, health, safety  
81 or welfare or is necessary to comply with a time limitation  
82 established by this code or by a federal statute or regulation  
83 or to prevent substantial harm to the public interest.

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

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

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

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

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

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

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

28 (d) The determination of the secretary of state shall be  
29 reviewable by the supreme court of appeals under its  
30 original jurisdiction, based upon a petition for a writ of

31 mandamus, prohibition or certiorari, as appropriate. Such  
32 proceeding may be instituted by:  
33 (1) The agency which promulgated the emergency rule;  
34 (2) A member of the Legislature; or  
35 (3) Any person whose personal or property interests will  
36 be significantly affected by the approval or disapproval of  
37 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.**

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

###### **§64-2-11(1a)(21). State tax commissioner.**

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

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

1 (a) The rules authorized by the Legislature in  
2 subsection (a), section sixteen (2d)(5) of this article were  
3 also proposed by the state board of health pursuant to  
4 section eight, article two-d, chapter sixteen of this code.  
5 (b) The legislative rules filed in the state register on the  
6 twenty-fifth day of November, one thousand nine hundred  
7 eighty-five, modified by the West Virginia health care cost  
8 review authority to meet the objections of the legislative



9 rule-making review committee and refiled in the state  
10 register on the twenty-eighth day of January, one thousand  
11 nine hundred eighty-six, relating to the West Virginia  
12 health care cost review authority (interim standards for  
13 lithotripsy services) are authorized.

**§64-2-16(4c)(6). Director of health.**

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

10 On page 3, §3.9 shall read as follows:

11 “3.9 Quorum — When applied to the EMSAC, a majority  
12 of the members thereof, except in the instance when at any  
13 meeting of the EMSAC, where a quorum is not present and  
14 the director causes to be deposited in the United States  
15 mail, postage prepaid, return receipt requested, to each  
16 member of the EMSAC within three days, a notice calling a  
17 meeting of the EMSAC at some convenient place in the state  
18 of West Virginia two weeks after the meeting at which no  
19 quorum was present. Quorum means any number of  
20 members of the EMSAC who attend such subsequent  
21 meeting. Any member missing two consecutive meetings  
22 shall be removed from the EMSAC.”

23 On page 6, §4.7.1 shall be deleted in its entirety, and

24 On page 7, §4.10.1 shall read as follows:

25 “4.10.1 every applicant for certification as an EMSP prior  
26 to such certification, shall demonstrate his or her  
27 knowledge and ability by undergoing a written  
28 examination and a demonstration of skills, and by attaining  
29 a passing score on the same. Passing score shall be the same  
30 for all testing programs.”

**§64-2-16(5d)(9). State board of health.**

1 The rules promulgated by the Legislature in subsection  
2 (a), section sixteen (five-i)(five) of this article were also  
3 proposed by the state board of health pursuant to section  
4 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  
2 seventeenth day of December, one thousand nine hundred  
3 eighty-five, modified by the director of health to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the fifteenth day of  
6 January, one thousand nine hundred eighty-six, relating to  
7 the director of health (adult group home licensure) are  
8 authorized.

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

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

**§64-2-16(31)(4). State department of health.**

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

**§64-2-17a(2)(9). Commissioner of motor vehicles.**

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

6 By inserting the words "licensed in the United States"  
7 after the phrase "physician of the applicant's choice," on  
8 page five, line two, and page seven, line one; and by striking  
9 out the words "licensed vision specialist" and inserting in  
10 lieu thereof the words "an optometrist or ophthalmologist  
11 licensed in the United States," on page five, line three, and  
12 on page seven, line two.

13 These rules were proposed by the commissioner pursuant  
14 to section nine, article two, chapter seventeen-a and section  
15 six, article three-c, chapter seventeen-b of this code.

16 (b) The legislative rules filed in the state register on the  
17 twentieth day of November, one thousand nine hundred  
18 eighty-four, relating to the commissioner of motor vehicles  
19 (titling a vehicle) are authorized.

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

**§64-2-17c(16)(4). Commissioner of motor vehicles.**

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

**§64-2-19(1)(4b). Commissioner of agriculture.**

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

**§64-2-19(2F)(6). Beef industry self-improvement assessment board.**

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

**§64-2-19(10b)(9). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the  
2 thirteenth day of January, one thousand nine hundred  
3 eighty-six, modified by the commissioner of agriculture to  
4 meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the thirty-first  
6 day of January, one thousand nine hundred eighty-six,

7 relating to the commissioner of agriculture (licensing of  
8 livestock dealers) are authorized.

**§64-2-20(1)(7). Department of natural resources.**

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

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

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

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

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

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

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

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

22 "The commission shall report to the legislative rule-  
23 making review committee as required by that committee,  
24 but in no event later than the first day of the regular session  
25 of the Legislature in the year one thousand nine hundred  
26 eighty-five. Such report shall include information

27 regarding the commission's data gathering efforts, the  
28 development of compliance programs, the progress in  
29 implementation, and such other matters as the committee  
30 may require, pertaining to the regulations hereby  
31 authorized."

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

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

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

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

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

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

1 (a) The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred  
3 eighty-three, relating to the commissioner of highways  
4 (transportation of hazardous waste by highway  
5 transporters) are authorized with the amendments set forth  
6 below:

7 Pages 3 and 7 after "40 CFR part 262" add the words "as  
8 amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words "as  
10 amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as  
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on the  
14 seventh day of September, one thousand nine hundred  
15 eighty-four, modified by the commissioner of highways to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the fifth day of  
18 October, one thousand nine hundred eighty-four, relating  
19 to the commissioner of highways (transportation of  
20 hazardous waste) are authorized with the amendment set  
21 forth below:

22 Page 5, by amending §3.01 by adding thereto a new  
23 subsection, designated subsection (4), to read as follows:  
24 "(4) Before accepting hazardous waste from a rail  
25 transporter, a highway transporter must sign and date the  
26 manifest and provide a copy to the rail transporter."

27 (c) The legislative rules filed in the state register on the  
28 twelfth day of December, one thousand nine hundred  
29 eighty-five, relating to the commissioner of highways  
30 (governing the transportation of hazardous wastes by  
31 vehicle upon the roads and highways of this state) are  
32 authorized with the amendments set forth below:

33 On page 18, the first line of §3.03 shall read as follows:

34 "3.03. Transporters who only accept Hazardous Waste  
35 from".

**§64-2-23(1)(13). Workers' compensation commissioner.**

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

6 (b) The legislative rules filed in the state register on the  
7 sixth day of August, one thousand nine hundred eighty-  
8 five, relating to the workers' compensation commissioner  
9 (standards for medical examination in occupational  
10 pneumoconiosis claims) are authorized with the  
11 amendments set forth below:

12 On page 1, the second and third unnumbered paragraphs  
13 on page one are amended to read as follows:

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

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

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

37 (11) It is recognized that arterial blood gas studies done  
38 in laboratories throughout this state are obtained at  
39 different altitudes. Only by "standardizing" for altitude  
40 can an equitable assessment be made of impairment when  
41 values of arterial oxygen are being measured at remarkably  
42 different altitudes. Therefore, the results reported from  
43 laboratories should include the name of the laboratory and  
44 the date and time of the testing, altitude of the laboratory  
45 and barometric pressure at the laboratory on the day the  
46 samples were collected. The O. P. Board will evaluate the  
47 arterial blood gas values by converting those values to the  
48 average altitude of Charleston, West Virginia. For this  
49 purpose, it shall be sufficient to add 1 mmHg to each  
50 arterial oxygen tension for each 300 feet or fraction thereof  
51 that the testing laboratory is located above the average  
52 altitude of Charleston, because the relationship of  
53 barometric pressure (altitude) and alveolar oxygen is

54 approximately linear up to 4,000 feet as long as the subject  
55 breathes room air.

56 As an example, Bluefield is located approximately 2,600  
57 feet above sea level. Charleston is approximately 600 feet  
58 above sea level. Thus, arterial oxygen values obtained in  
59 Bluefield should have 6.67 mmHg added to them before  
60 applying the table to them to obtain "percent impairment."  
61 The calculations are as follows:

62 "Bluefield (2,600') minus Charleston (600') equals 2,000'  
63 differential  
64 2,000' divided by 300' altitude equals 6.67  
65 6.67 multiplied by 1 mmHg per 300' altitude equals 6.67  
66 mmHg"

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

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

**§64-2-29a(2)(6). Secretary of state.**

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

**§64-2-30(3)(7). Board of medicine.**

1 (a) The legislative rules filed in the state register on the  
2 twelfth day of May, one thousand nine hundred eighty-  
3 three, relating to the board of medicine (licensing,  
4 disciplinary and complaint procedures; podiatry;  
5 physicians assistants) are authorized with the  
6 modifications set forth below:



## 7    “§24.12.

8    (b) It shall be the responsibility of the supervising  
9    physician to obtain consent in writing from the patient  
10   before Type A physician assistants employed in a satellite  
11   clinic may render general medical or surgical services,  
12   except in emergencies.

## 13   §24.16.

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

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

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

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

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

1    The rules authorized by the Legislature in subsection (a),  
2   section thirty (three) (seven) of this article were also  
3   proposed by the West Virginia board of medicine pursuant  
4   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),  
2 section thirty (three) (seven) of this article were also  
3 proposed by the board of medicine pursuant to section  
4 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  
2 twenty-ninth day of November, one thousand nine hundred  
3 eighty-five, modified by the state board of registration for  
4 professional engineers to meet the objections of the  
5 legislative rule-making review committee and refiled in the  
6 state register on the twenty-eighth day of January, one  
7 thousand nine hundred eighty-six, relating to the West  
8 Virginia board of registration of professional engineers  
9 (legislative rules governing the West Virginia state board of  
10 registration for professional engineers) are authorized.

**§64-2-30(25)(7). Nursing home administrators licensing board.**

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

**§64-2-30(26)(3). West Virginia board of hearing aid dealers.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of November, one thousand nine hundred  
3 eighty-five, modified by the West Virginia board of hearing  
4 aid dealers to meet the objections of the legislative rule-  
5 making review committee and refiled in the state register on  
6 the twenty-eighth day of January, one thousand nine  
7 hundred eighty-six, relating to the West Virginia board of  
8 hearing aid dealers (rules governing the West Virginia  
9 board of hearing aid dealers) are authorized. These rules  
10 were proposed by the West Virginia board of hearing aid

11 dealers pursuant to sections three and fifteen, article  
12 twenty-six, chapter thirty of this code.

**§64-2-30(26)(15). West Virginia board of hearing aid dealers.**

1 The rules authorized by the Legislature in section thirty  
2 (twenty-six) (three) of this article were also proposed by the  
3 West Virginia board of hearing aid dealers pursuant to  
4 section fifteen, article twenty-six, chapter thirty of this  
5 code.

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

*Bruce O. Wilborn*  
.....  
Chairman Senate Committee

*Floyd Fullen*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Isaac C. Keith*  
.....  
Clerk of the Senate

*Donall T. Kapp*  
.....  
Clerk of the House of Delegates

*Dan Tomlin*  
.....  
President of the Senate

*Joseph P. Allright*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *26th*  
*March*  
day of ..... 1986.

*Mike Murphy*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 5:14 p.m.

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OFFICE OF THE  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/26/86