WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION. 1991

ENROLLED

HOUSE BILL No. 2627

(By Mr. Dale Roop and Gallagher)

Passed March 8, 1991

In Effect 90 days from Passage
ENROLLED

H. B. 2627

(By Delegates Roop and Gallagher)

[Passed March 8, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact sections fifteen, fifteen-a and fifteen-b, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the secretary of state's authority to disapprove amendments to emergency rules; granting the attorney general the authority to disapprove amendments to emergency rules filed by the secretary of state; amending time frames; and changing the effective date of an emergency rule.

Be it enacted by the Legislature of West Virginia:

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

§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 upon the approval of the secretary of state in accordance with section fifteen-a of this article or upon the approval of the attorney general in accord-
ance with section fifteen-b or upon the thirty-fifth day
following such filing, whichever occurs first. 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 jurisdic-
tion of an action challenging their validity. Fourteen
copies of the rules and of the required statement shall
be filed immediately with the secretary of state and one
copy shall be filed immediately 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, or the
attorney general, acting under the authority provided
for in section fifteen-b 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
thirty days of the date the proposed rule was filed as
an emergency rule; in which case the emergency rule
expires on the thirty-first day.

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

(4) The Legislature has authorized or directed pro-
mulgation 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 become 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: Provided, That such emergency amendment shall become effective upon the approval of the secretary of state in accordance with section fifteen-a of this article or upon approval of the attorney general in accordance with section fifteen-b of this article or upon the thirty-fifth day following such filing, whichever occurs first.

(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 provision 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 and amendments to emergency rules by the secretary of state; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by an agency, under the provisions of section fifteen of this article, by any agency, except for the secretary of state, the secretary of state shall review such rule or such amendment and, within thirty-five days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved. An emergency rule filed by the secretary of state shall be reviewed by the attorney general as provided for in section fifteen-b of this article.

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

(1) That the agency has exceeded the scope of its statutory authority in promulgating the emergency rule or in filing an amendment to the emergency rule;

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

(3) That the rule or an amendment to 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) If the secretary of state determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment 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 amendment 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.

(e) 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 property interests will be significantly affected by the approval or disapproval of the emergency rule by the secretary of state.

§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the attorney general; judicial review.
(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by the secretary of state under the provisions of section fifteen of this article, the attorney general shall review such rule or such amendment and, within thirty-five days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved.

(b) The attorney general shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the secretary of state has exceeded the scope of its statutory authority in promulgating the emergency rule or in filing an amendment to the emergency rule;

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

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

(c) If the attorney general determines, based upon the contents of the rule or the supporting information filed by the secretary of state, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the attorney general concludes that the information submitted by the secretary of state 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 secretary of state 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) If the attorney general determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disap-
proved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the attorney general concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment 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.

(e) The determination of the attorney general 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 secretary of state;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the attorney general.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 2nd day of August, 1991.

Governor