

RECEIVED

1991 APR -2 AM 9:51

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991



# ENROLLED

HOUSE BILL No. 2627

(By ~~Mr.~~ Debs 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.**

1     (a) Any agency with authority to propose legislative  
2 rules may, without hearing, find that an emergency  
3 exists requiring that emergency rules be promulgated  
4 and promulgate the same in accordance with this  
5 section. Such emergency rules, together with a state-  
6 ment of the facts and circumstances constituting the  
7 emergency, shall be filed in the state register and shall  
8 become effective upon the approval of the secretary of  
9 state in accordance with section fifteen-a of this article  
10 or upon the approval of the attorney general in accord-

11    ance with section fifteen-b or upon the thirty-fifth day  
12    following such filing, whichever occurs first. Such  
13    emergency rules may adopt, amend or repeal any  
14    legislative rule, but the circumstances constituting the  
15    emergency requiring such adoption, amendment or  
16    repeal shall be stated with particularity and be subject  
17    to *de novo* review by any court having original jurisdic-  
18    tion of an action challenging their validity. Fourteen  
19    copies of the rules and of the required statement shall  
20    be filed immediately with the secretary of state and one  
21    copy shall be filed immediately with the legislative rule-  
22    making review committee.

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

26    (1) The secretary of state, acting under the authority  
27    provided for in section fifteen-a of this article, or the  
28    attorney general, acting under the authority provided  
29    for in section fifteen-b of this article, disapproves the  
30    emergency rule because (A) the agency has exceeded the  
31    scope of its statutory authority in promulgating the  
32    emergency rule; (B) an emergency does not exist  
33    justifying the promulgation of such rule; or (C) the rule  
34    was not promulgated in compliance with the provisions  
35    of this section.

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

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

46    (4) The Legislature has authorized or directed pro-  
47    mulgation of an authorized legislative rule dealing with  
48    substantially the same subject matter since such  
49    emergency rule was first promulgated, and in which  
50    case the emergency rule expires on the date the  
51    authorized rule is made effective.

52 (5) The Legislature has, by law, disapproved of such  
53 emergency rule; in which case the emergency rule  
54 expires on the date the law become effective.

55 (b) Any amendment to an emergency rule made by  
56 the agency shall be filed in the state register and does  
57 not constitute a new emergency rule for the purpose of  
58 acquiring additional time or avoiding the expiration  
59 dates in subdivision (1), (2), (3) or (4), subsection (a) of  
60 this section: *Provided*, That such emergency amendment  
61 shall become effective upon the approval of the secretary  
62 of state in accordance with section fifteen-a of this  
63 article or upon approval of the attorney general in  
64 accordance with section fifteen-b of this article or upon  
65 the thirty-fifth day following such filing, whichever  
66 occurs first.

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

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

75 (e) The provision of this section shall not be used to  
76 avoid or evade any provision of this article or any other  
77 provisions of this code, including any provisions for  
78 legislative review and approval of proposed rules. Any  
79 emergency rule promulgated for any such purpose may  
80 be contested in a judicial proceeding before a court of  
81 competent jurisdiction.

82 (f) The legislative rule-making review committee may  
83 review any emergency rule to determine (1) whether the  
84 agency has exceeded the scope of its statutory authority  
85 in promulgating the emergency rule; (2) whether there  
86 exists an emergency justifying the promulgation of such  
87 rule; and (3) whether the rule was promulgated in  
88 compliance with the requirements and prohibitions  
89 contained in this section. The committee may recom-  
90 mend to the agency, the Legislature, or the secretary of  
91 state such action as it may deem proper.

92 (g) For the purposes of this section, an emergency  
93 exists when the promulgation of a rule is necessary for  
94 the immediate preservation of the public peace, health,  
95 safety or welfare or is necessary to comply with a time  
96 limitation established by this code or by a federal statute  
97 or regulation or to prevent substantial harm to the  
98 public interest.

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

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

13 (b) The secretary of state shall disapprove an emer-  
14 gency rule or an amendment to an emergency rule if he  
15 determines:

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

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

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

25 (c) If the secretary of state determines, based upon the  
26 contents of the rule or the supporting information filed  
27 by the agency, that the emergency rule should be  
28 disapproved, he may disapprove such rule without  
29 further investigation, notice or hearing. If, however, the

30 secretary of state concludes that the information  
31 submitted by the agency is insufficient to allow a proper  
32 determination to be made as to whether the emergency  
33 rule should be disapproved, he may make further  
34 investigation, including, but not limited to, requiring  
35 the agency or other interested parties to submit  
36 additional information or comment or fixing a date,  
37 time and place for the taking of evidence on the issues  
38 involved in making a determination under the provi-  
39 sions of this section.

40 (d) If the secretary of state determines, based upon  
41 the contents of the amendment to an emergency rule or  
42 the supporting information filed by the agency, that the  
43 amendment to the emergency rule should be disap-  
44 proved, he may disapprove such amendment without  
45 further investigation, notice or hearing. If, however, the  
46 secretary of state concludes that the information  
47 submitted by the agency is insufficient to allow a proper  
48 determination to be made as to whether the amendment  
49 should be disapproved, he may make further investiga-  
50 tion, including, but not limited to, requiring the agency  
51 or other interested parties to submit additional informa-  
52 tion or comment or fixing a date, time and place for the  
53 taking of evidence on the issues involved in making a  
54 determination under the provisions of this section.

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

60 (1) The agency which promulgated the emergency  
61 rule;

62 (2) A member of the Legislature; or

63 (3) Any person whose personal property interests will  
64 be significantly affected by the approval or disapproval  
65 of the emergency rule by the secretary of state.

**§29A-3-15b. Disapproval of emergency rules and amend-  
ments to emergency rules by the attorney  
general; judicial review.**

1 (a) Upon the filing of an emergency rule or filing of  
2 an amendment to an emergency rule by the secretary  
3 of state under the provisions of section fifteen of this  
4 article, the attorney general shall review such rule or  
5 such amendment and, within thirty-five days of such  
6 filing, shall issue a decision as to whether or not such  
7 emergency rule or such amendment to an emergency  
8 rule should be disapproved.

9 (b) The attorney general shall disapprove an emer-  
10 gency rule or an amendment to an emergency rule if he  
11 determines:

12 (1) That the secretary of state has exceeded the scope  
13 of its statutory authority in promulgating the emer-  
14 gency rule or in filing an amendment to the emergency  
15 rule;

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

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

22 (c) If the attorney general determines, based upon the  
23 contents of the rule or the supporting information filed  
24 by the secretary of state, that the emergency rule should  
25 be disapproved, he may disapprove such rule without  
26 further investigation, notice or hearing. If, however, the  
27 attorney general concludes that the information submit-  
28 ted by the secretary of state is insufficient to allow a  
29 proper determination to be made as to whether the  
30 emergency rule should be disapproved, he may make  
31 further investigation, including, but not limited to,  
32 requiring the secretary of state or other interested  
33 parties to submit additional information or comment or  
34 fixing a date, time and place for the taking of evidence  
35 on the issues involved in making a determination under  
36 the provisions of this section.

37 (d) If the attorney general determines, based upon the  
38 contents of the amendment to an emergency rule or the  
39 supporting information filed by the agency, that the  
40 amendment to the emergency rule should be disap-

41 proved, he may disapprove such amendment without  
42 further investigation, notice or hearing. If, however, the  
43 attorney general concludes that the information submit-  
44 ted by the agency is insufficient to allow a proper  
45 determination to be made as to whether the amendment  
46 should be disapproved, he may make further investiga-  
47 tion, including, but not limited to, requiring the agency  
48 or other interested parties to submit additional informa-  
49 tion or comment or fixing a date, time and place for the  
50 taking of evidence on the issues involved in making a  
51 determination under the provisions of this section.

52 (e) The determination of the attorney general shall be  
53 reviewable by the supreme court of appeals under its  
54 original jurisdiction, based upon a petition for a writ of  
55 mandamus, prohibition or certiorari, as appropriate.  
56 Such proceeding may be instituted by:

57 (1) The secretary of state;

58 (2) A member of the Legislature; or

59 (3) Any person whose personal property interests will  
60 be significantly affected by the approval or disapproval  
61 of the emergency rule by the attorney general.



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

*Somer Neck*  
-----  
Chairman Senate Committee

*Ernest C Moore*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Samuel B. Adams*  
-----  
Clerk of the Senate

*Donald Z. Hopp*  
-----  
Clerk of the House of Delegates

*Neil Swartz*  
-----  
President of the Senate

*Robert C. Q.*  
-----  
Speaker of the House of Delegates

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

*Yaston Caperton*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/41

Time 10:10 am