

COMMITTEE SUBSTITUTE

FOR

H. B. 4261

(BY DELEGATES FLEISCHAUER, MILEY, BROWN, CAPUTO,
HUNT, PINO, OVERINGTON, SOBONYA)

(Originating in the House Committee on the Judiciary)
[February 24, 2012]

A BILL to amend and reenact §29A-1-2 and §29A-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §29A-3-1a, §29A-3-4, §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and §29A-3-15b of said code; and to amend said code by adding three new sections, designated §29A-3-1c, §29A-3-1d and §29A-3-9a, all relating to review of state administrative agency rule-making; defining terms; altering designation of types of rules that have not been approved by the Legislature and that are exempt from legislative review; establishing deadline for action by agency action for certain proposed rules before the rule is

deemed withdrawn; requiring agency response to public comments; requiring all sections of a rule be filed when agency proposing rule amendment; providing for methodology for repeal of rules; establishing new publishing and rule-making requirements for certain Department of Health and Human Services policy manuals; providing new process for review and approval of legislative rules incorporating federal mandated requirements; revising emergency rule-making process to allow for public comment, more information, and extended comment period; providing new process for provisional legislative rules; and altering certain agency filing requirements.

Be it enacted by the Legislature of West Virginia:

That §29A-1-2 and §29A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29A-3-1a, §29A-3-4, §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and §29A-3-15b of said code be amended and reenacted; and that said code be amended by adding three new sections, designated §29A-3-1c, §29A-3-1d and §29A-3-9a, all to read as follows:

**ARTICLE 1. DEFINITIONS AND APPLICATION OF
CHAPTER**

§29A-1-2. Definitions of terms used in this chapter.

1 For the purposes of this chapter:

2 (a) "Agency" means any state board, commission,
3 department, office or officer authorized by law to make rules
4 or adjudicate contested cases, except those in the legislative
5 or judicial branches;

6 (b) "Contested case" means a proceeding before an
7 agency in which the legal rights, duties, interests or privileges
8 of specific parties are required by law or constitutional right
9 to be determined after an agency hearing, but does not
10 include cases in which an agency issues a license, permit or
11 certificate after an examination to test the knowledge or
12 ability of the applicant where the controversy concerns
13 whether the examination was fair or whether the applicant
14 passed the examination and shall not include rule making;

15 (c) "Agency-promulgated rule" means any rule an agency
16 is authorized by the Legislature to promulgate that meets all

17 requirements of being considered a legislative rule except for
18 the authority granted by the Legislature to the agency
19 expressly allows the agency to proceed with final adoption of
20 the rule without prior specific authorization by Legislature
21 rule enactment pursuant to section nine, article three of this
22 chapter. An agency-promulgated rule to be lawfully
23 promulgated shall comport to all other requirements of this
24 article and shall have the same force and effect as a
25 legislative rule.

26 (e) ~~(d)~~ "Interpretive rule" means every rule, ~~as defined in~~
27 ~~subsection (I) of this section,~~ adopted by an agency
28 independently of any delegation of legislative power which
29 is intended by the agency to provide information or guidance
30 to the public regarding the agency's interpretations, policy or
31 opinions upon the law enforced or administered by it and
32 which is not intended by the agency to be determinative of
33 any issue affecting private rights, privileges or interests. An
34 interpretive rule may not be relied upon to impose a civil or
35 criminal sanction nor to regulate private conduct or the

36 exercise of private rights or privileges nor to confer any right
37 or privilege provided by law and is not admissible in any
38 administrative or judicial proceeding for such purpose, except
39 where the interpretive rule established the conditions for the
40 exercise of discretionary power as herein provided. However,
41 an interpretive rule is admissible for the purpose of showing
42 that the prior conduct of a person was based on good faith
43 reliance on such rule. The admission of such rule in no way
44 affects any legislative or judicial determination regarding the
45 prospective effect of such rule. Where any provision of this
46 code lawfully commits any decision or determination of fact
47 or judgment to the sole discretion of any agency or any
48 executive officer or employee, the conditions for the exercise
49 of that discretion, to the extent that such conditions are not
50 prescribed by statute or by legislative rule, may be
51 established by an interpretive rule and such rule is admissible
52 in any administrative or judicial proceeding to prove such
53 conditions.

54 ~~(d)~~ (e) "Legislative rule" means every rule, ~~as defined in~~
55 ~~subsection (f) of this section~~ proposed or promulgated by an
56 agency pursuant to this chapter. Legislative rule includes
57 every rule which, when promulgated after or pursuant to
58 authorization of the Legislature, has: (1) The force of law; or
59 (2) supplies a basis for the imposition of civil or criminal
60 liability; or (3) grants or denies a specific benefit. Every rule
61 which, when effective, is determinative on any issue affecting
62 private rights, privileges or interests is a legislative rule.
63 Unless lawfully promulgated as an emergency rule, a
64 legislative rule is only a proposal by the agency and has no
65 legal force or effect until promulgated by specific
66 authorization of the Legislature. Except where otherwise
67 specifically provided in this code, legislative rule does not
68 include: (A) findings or determinations of fact made or
69 reported by an agency, including any such findings and
70 determinations as are required to be made by any agency as
71 a condition precedent to proposal of a rule to the Legislature;

72 (B) declaratory rulings issued by an agency pursuant to the
73 provisions of section one, article four of this chapter; (C)
74 orders, as defined in ~~subdivision (e)~~ of this section; or (D)
75 executive orders or proclamations by the Governor issued
76 solely in the exercise of executive power, including executive
77 orders issued in the event of a public disaster or emergency;

78 ~~(e)~~ (f) "Order" means the whole or any part of the final
79 disposition (whether affirmative, negative, injunctive or
80 declaratory in form) by any agency of any matter other than
81 rule making;

82 ~~(f)~~ (g) "Person" includes individuals, partnerships,
83 corporations, associations or public or private organizations
84 of any character;

85 ~~(g)~~ (h) "Procedural rule" means every rule, ~~as defined in~~
86 ~~subsection (I) of this section~~, which fixes rules of procedure,
87 practice or evidence for dealings with or proceedings before
88 an agency, including forms prescribed by the agency;

89 ~~(h)~~ (i) "Proposed rule" is a legislative rule, interpretive
90 rule, or a procedural rule which has not become effective

91 pursuant to the provisions of this chapter or law authorizing
92 its promulgation;

93 (j) "Provisional legislative rule" means a legislative rule
94 that the agency has been directed by law to propose, to be
95 effective for a limited time as a legislative rule prior to
96 legislative authorization for promulgation as a legislative
97 rule, pursuant to this chapter.

98 ~~(j)~~ (k) "Rule" includes every regulation, standard or
99 statement of policy or interpretation of general application
100 and future effect, including the amendment or repeal thereof,
101 affecting private rights, privileges or interests, or the
102 procedures available to the public, adopted by an agency to
103 implement, extend, apply, interpret or make specific the law
104 enforced or administered by it or to govern its organization
105 or procedure, but does not include regulations relating solely
106 to the internal management of the agency, nor regulations of
107 which notice is customarily given to the public by markers or
108 signs, nor mere instructions. Every rule shall be classified as
109 "legislative rule," "interpretive rule" or "procedural rule," all

110 as defined in this section, and shall be effective only as
111 provided in this chapter;

112 (j) (l) "Rule making" means the process for the
113 formulation, amendment or repeal of a rule as provided in
114 this 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 orders
5 shall be admitted to record in the State Register when and to
6 the extent the Governor ~~deems~~ considers 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 Parole,

14 the Public Service Commission, the board of Public Works
15 sitting as such and the Secondary Schools Activities
16 Commission. ~~Provided, That~~ The rules of such agencies shall
17 be filed in the State Register in the form prescribed by this
18 chapter and be effective no sooner than sixty consecutive
19 days after being so filed ~~Provided, however, That~~ The rules
20 promulgated by the state colleges and universities shall only
21 be filed with the higher education governing boards.
22 ~~Provided further, That~~ Such agencies may promulgate
23 emergency rules in conformity with section fifteen, article
24 three of this chapter. Rules or amendments thereto authorized
25 by this subsection shall be considered by the agency for
26 adoption not later than six months after the close of public
27 comment. A notice of adoption or withdrawal by the agency
28 shall be filed in the State Register within that period. Failure
29 to file such notice shall constitute withdrawal. The Secretary
30 of State shall note such withdrawal in the State Register
31 immediately upon the expiration of the six- month period.

32 (c) The provisions of this chapter do not apply to rules
33 relating to or contested cases involving the conduct of
34 inmates or other persons admitted to public institutions, the
35 open seasons and the bag, creel, size, age, weight and sex
36 limits with respect to the wildlife in this state, or the conduct
37 of persons in military service. or the receipt of public
38 assistance. ~~Such~~ These rules shall be filed in the State
39 Register in the form prescribed by this chapter and be
40 effective upon filing: Provided, That rules relating to the
41 receipt of public assistance shall be subject to the provisions
42 of section one-c, article three of this chapter.

43 (d) Nothing herein shall be construed to affect, limit or
44 expand any express and specific exemption from this chapter
45 contained in any other statute relating to a specific agency,
46 but such exemptions shall be construed and applied in
47 accordance with the provisions of this chapter to effectuate
48 any limitations on such exemptions contained in any such
49 other statute.

ARTICLE 3. RULE MAKING.

§29A-3-1a. Filing proposed amendments to an existing rule.

1 (a) ~~Rules promulgated to amend existing rules may be~~
2 ~~filed on a section by section basis without having to refile in~~
3 ~~the state register all of the other sections of an existing series~~
4 ~~numbered rule: *Provided, That such filing shall list, by*~~
5 ~~proper citation, those sections, not amended, which are~~
6 ~~directly affected by those sections amended: *Provided,*~~
7 ~~*however, That amendments so filed* When amending an~~
8 ~~existing rule or proposing a new rule, agencies shall file all~~
9 ~~sections of the proposed rule. Each amendment filed to an~~
10 ~~existing rule shall be accompanied by note of explanation as~~
11 ~~to the effect of such amendment and its relation to the~~
12 ~~existing rules.~~

13 (b) ~~Rules promulgated to amend existing rules and filed~~
14 ~~as an emergency rule may be filed on a section by section~~
15 ~~basis without having to refile in the state register all of the~~
16 ~~other sections of an existing series numbered rule: *Provided,*~~
17 ~~That such filing shall list, by proper citation, those sections~~

18 ~~not amended, which are directly affected by those sections~~
19 ~~amended.~~

20 (b) Any rule being repealed shall be filed in its entirety
21 with the rule series provisions stricken. A rule may not be
22 repealed by reference in another rule.

§29A-3-1c. Rules of the Department of Health and Human Services.

1 (a) The Secretary of the Department of Health and
2 Human Services as authorized by this section, other statute
3 or legislative rule, may publish manuals that provide policy
4 guidance for the implementation and administration of
5 agency programs. Manuals are considered agency-
6 promulgated rules as defined pursuant to this article.

7 (b) Notwithstanding the provisions of section eight,
8 article two of this chapter, the Secretary of the Department of
9 Health and Human Services may make manuals available to
10 the public in an electronic format. Upon the effective date of
11 the manual or any amendment thereto, the secretary shall
12 provide an electronic copy of policy manual to the Secretary

13 of State at no cost. Each manual will be considered
14 addendums to the Code of State Rules, and electronically
15 published as part of the State Register. This manual shall be
16 noticed in the State Register pursuant to article two of this
17 chapter and subject to thirty day public notice and comment
18 period pursuant to section five of this article.

19 (c) The following Department of Health and Human
20 Services manuals are agency-promulgated rules, and subject
21 to the provisions of this section: Bureau for Child Support
22 Enforcement Policy Manual; Income Maintenance Manual;
23 West Virginia Medicaid Provider Manuals; Medicaid State
24 Plan Manual; and the Social Services Manual.

§29A-3-1d. Proposal of federally mandated rules.

1 (a) Notwithstanding the provisions of section nine of this
2 article, when a legislative rule or amendment to an existing
3 legislative rule is being proposed by an agency to adopt by
4 reference or otherwise comport the rule to a federal
5 counterpart regulation for the purposes of meeting minimum
6 federal requirements for a state administered program in

7 which the state has assumed regulatory responsibility, the
8 agency may promulgate the rule as an agency-promulgated
9 rule without legislative approval upon meeting the
10 requirements of this section.

11 (b) To qualify for agency-promulgated rule status, the rule
12 or amendment to the existing rule shall contain only provisions
13 necessary to fulfill the state's duties associated with
14 administering and complying with the federally delegated
15 program, and may not exceed minimum federal requirements,
16 and to the extent the rule does, it is in violation of this section
17 and shall be severed from the rule and be null and void.

18 (c) The agency shall fulfill all filing, hearing and notice
19 requirements otherwise required pursuant to this article. The
20 agency shall as part of rule filing, provide an explanation of
21 the purpose of the rule and a statement and finding
22 specifically detailing the reasons the rule is eligible for
23 agency-promulgated rule status.

24 (d) The federal regulation or statute shall be
25 electronically attached or otherwise electronically available

26 and be available for inspection at the Secretary of State's
27 office.

28 (e) The rule is effective thirty days following close of
29 public comment period. Rules are to be filed with the
30 Legislative Rule-making and Review Committee as provided
31 in section eleven of this article. The Legislature may
32 disapprove or amend an agency-promulgated rule without
33 limitation.

§29A-3-4. Filing of proposed procedural rules and interpretive rules.

1 (a) When an agency proposes a an agency-promulgated
2 rule, procedural rule or an interpretive rule, the agency shall
3 file in the State Register a notice of its action, including the
4 text of the rule as proposed.

5 (b) All proposed rules filed under subsection (a) of this
6 section shall have a fiscal note attached itemizing the cost of
7 implementing the rules as they relate to this state and to
8 persons affected by the rules. ~~and regulations.~~ Such fiscal
9 note shall include all information included in a fiscal note for

10 either house of the Legislature and a statement of the
11 economic impact of the rule on the state or its residents. The
12 objectives of the rules shall be clearly and separately stated
13 in the fiscal note by the agency issuing the proposed rules.
14 No agency-promulgated rule, -procedural or interpretive rule
15 shall be void or voidable by virtue of noncompliance with
16 this subsection.

§29A-3-6. Filing findings and determinations for rules in state register; evidence deemed public record.

1 (a) Incident to fixing a date for public comment on a
2 proposed rule, the agency shall promulgate the findings and
3 determinations required as a condition precedent thereto, and
4 state fully and succinctly the reasons therefor and file such
5 findings and determinations in the State Register. If the
6 agency amends the proposed rule as a result of the evidence
7 or comment presented pursuant to section five, such
8 amendment shall be filed with a description of any changes
9 and a statement listing the reasons for the amendment. The
10 agency shall also provide an analysis of the comments

11 received and the reasons for adoption or rejection of any
12 suggested revisions submitted as comments to the proposed
13 rule.

14 (b) The statement of reasons and a transcript of all
15 evidence and public comment received pursuant to notice are
16 public records and shall be carefully preserved by the agency
17 and be open for public inspection and copying for a period of
18 not less than five years from the date of the hearing.

§29A-3-8. Adoption of procedural and interpretive rules.

1 ~~A~~ An agency-promulgated, procedural and interpretive
2 rule, shall be considered by the agency for adoption not later
3 than six months after the close of public comment and a
4 notice of withdrawal or adoption shall be filed in the State
5 Register within that period. Failure to file such notice shall
6 constitute withdrawal and the Secretary of State shall note
7 such failure in the State Register immediately upon the
8 expiration of the six- month period.

9 ~~A~~ An agency-promulgated, procedural or interpretive rule
10 may be amended by the agency prior to final adoption

11 without further hearing or public comment. No such
12 amendment may change the main purpose of the rule. If the
13 fiscal implications have changed since the rule was proposed,
14 a new fiscal note shall be attached to the notice of filing.
15 Upon adoption of the rule, ~~(including any such amendment,)~~
16 the agency shall file the text of the adopted agency-
17 promulgated, procedural or interpretive rule with its notice of
18 adoption in the State Register and the same shall be effective
19 on the date specified in the rule or thirty days after such
20 filing, whichever is later.

**§29A-3-9a. Proposal and promulgation of provisional
legislative rules.**

1 (a) Unless otherwise specified in the implementing
2 statute, whenever the Legislature enacts a law mandating an
3 agency to propose a legislative rule, and further directs the
4 agency to promulgate a provisional legislative rule, the
5 agency shall within sixty days of the effective date of the
6 statute, file the rule for public notice as provided in section
7 five of this article and also submit the rule as a legislative rule

8 as provided pursuant to the requirements of this article. The
9 provisional legislative rule shall be filed by the agency as
10 provided in section six of this article no later than thirty days
11 following the close of public comment. The rule is effective
12 upon final filing by the agency. The provisional legislative
13 rule shall remain effective for fifteen months or until the
14 legislative rule is acted upon by enactment of the Legislature
15 pursuant to section thirteen of this article, whichever occurs
16 first. Any amendment by the agency to the provisional
17 legislative rule is subject to the same notice and effective date
18 requirements. Amendments to the provisional legislative rule
19 do not alter the initial fifteen month effective period for the
20 provisional legislative rule. If the provisional legislative rule
21 expires due to the failure of legislative authorization pursuant
22 to section thirteen of this article, the agency may not refile the
23 same or similar rule as an emergency rule or a provisional
24 legislative rule.

25 (b) A provisional legislative rule may be disapproved by
26 the Secretary of State, acting under the authority provided in

27 section fifteen-a of this article, or the Attorney General,
28 acting under the authority provided in section fifteen-b of
29 this article.

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

1 (a) Any agency with authority to propose legislative rules
2 may, ~~without hearing,~~ find that an emergency exists requiring
3 that emergency rules be promulgated and promulgate the
4 same in accordance with this section. Such emergency rules,
5 together with a statement of the facts and circumstances
6 constituting the emergency, and a listing of state agencies,
7 professions, businesses and other identifiable interest groups
8 affected by the proposed emergency rule shall be filed with
9 the Secretary of State, and a notice of such filing shall be
10 published in the State Register: Provided, That failure to list
11 all known state agencies, professions, businesses and other
12 identifiable interest groups may not be the basis for
13 disapproval of the rule or subject the rule to judicial review.
14 The agency shall have a thirty day public comment period for

15 a proposed emergency rule, beginning the day of filing.
16 Upon closure of the public hearing, the ~~Such~~ emergency
17 ~~rules~~ rule shall become effective upon the approval of the
18 Secretary of State in accordance with section fifteen-a of this
19 article or upon the approval of the Attorney General in
20 accordance with section fifteen-b or upon the ~~forty-second~~
21 forty-fifth day following such filing, whichever occurs first:
22 Provided, that upon a finding that the emergent circumstances
23 existing pursuant to subsection (f) of this section require
24 immediate authorization of the emergency rule, the Secretary
25 of State, acting under the authority provided in section
26 fifteen-a of this article, or the Attorney General, acting under
27 the authority provided in section fifteen-b of this article, may
28 immediately approve the emergency rule for the remainder of
29 the forty-five day comment and review period, at which time
30 that approval of the emergency rule will expire. Any time
31 following the close of public hearing, the final determination
32 on the existence of an emergency may be made by the
33 Secretary of State, acting under the authority provided in

34 section fifteen-a of this article, or the Attorney General,
35 acting under the authority provided in section fifteen-b of
36 this article. ~~Such~~ Emergency rules may adopt, amend or
37 repeal any legislative rule, but the circumstances constituting
38 the emergency requiring such adoption, amendment or repeal
39 shall be stated with particularity and be subject to de novo
40 review by any court having original jurisdiction of an action
41 challenging their validity. ~~Fourteen~~ Two paper copies and an
42 electronic version of the rules and of the required statement
43 shall be filed immediately with the Secretary of State and one
44 paper copy and an electronic copy shall be filed immediately
45 with the Legislative Rule-Making Review Committee.

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

49 (1) The Secretary of State, acting under the authority
50 provided for in section fifteen-a of this article, or the
51 Attorney General, acting under the authority provided in
52 section fifteen-b of this article, disapproves the emergency

53 rule because: (A) The emergency rule or an amendment to
54 the emergency rule exceeds the scope of the law authorizing
55 or directing the promulgation thereof; (B) an emergency does
56 not exist justifying the promulgation of the emergency rule;
57 or (C) the emergency rule was not promulgated in
58 compliance with the provisions of this section. An
59 emergency rule may not be disapproved pursuant to the
60 authority granted by paragraphs (A) or (B) of this subdivision
61 on the basis that the Secretary of State or the Attorney
62 General disagrees with the underlying public policy
63 established by the Legislature in enacting the supporting
64 legislation. An emergency rule which would otherwise be
65 approved as being necessary to comply with a time limitation
66 established by this code or by a federal statute or regulation
67 may not be disapproved pursuant to the authority granted by
68 paragraphs (A) or (B) of this subdivision on the basis that the
69 agency has failed to file the emergency rule prior to the date
70 fixed by such time limitation. ~~When the supporting statute~~

71 ~~specifically directs an agency to promulgate an emergency~~
72 ~~rule, or specifically finds that an emergency exists and directs~~
73 ~~the promulgation of an emergency rule, the emergency rule~~
74 ~~may not be disapproved pursuant to the authority granted by~~
75 ~~paragraph (B) of this subdivision.~~ An emergency rule may
76 not be disapproved on the basis that the Legislature has not
77 specifically directed an agency to promulgate the emergency
78 rule, or has not specifically found that an emergency exists
79 and directed the promulgation of an emergency rule.

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

84 (3) The agency has not previously filed and fails to file
85 the proposed rule with the Legislative Rule-Making Review
86 Committee within ninety days of the date the proposed rule
87 was filed as an emergency rule; in which case the emergency
88 rule expires on the ninety-first day.

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

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

97 (b) Any amendment to an emergency rule made by the
98 agency shall be filed in the State Register and does not
99 constitute a new emergency rule for the purpose of acquiring
100 additional time or avoiding the expiration dates in
101 subdivision (2), (3), (4) or (5), subsection (a) of this section:
102 *Provided*, That such emergency amendment shall become
103 effective upon the approval of the Secretary of State in
104 accordance with section fifteen-a of this article or upon
105 approval of the Attorney General in accordance with section
106 fifteen-b of this article or upon the ~~forty-second~~ forty-fifth
107 day following such filing, whichever occurs first.

108 (c) Once an emergency rule expires due to the conclusion
109 of fifteen months or due to the effect of subdivision (2), (3),
110 (4) or (5), subsection (a) of this section, the agency may not
111 refile the same or similar rule as an emergency rule.

112 (d) The provision of this section shall not be used to
113 avoid or evade any provision of this article or any other
114 provisions of this code, including any provisions for
115 legislative review and approval of proposed rules. Any
116 emergency rule promulgated for any such purpose may be
117 contested in a judicial proceeding before a court of competent
118 jurisdiction.

119 (e) The Legislative Rule-Making Review Committee may
120 review any emergency rule to determine: (1) Whether the
121 emergency rule or an amendment to the emergency rule
122 exceeds the scope of the law authorizing or directing the
123 promulgation thereof; (2) whether there exists an emergency
124 justifying the promulgation of such emergency rule; and (3)
125 whether the emergency rule was promulgated in compliance
126 with the requirements and prohibitions contained in this

127 section. The committee may recommend to the agency, the
128 Legislature, or the Secretary of State such action as it may
129 ~~deem~~ consider proper.

130 (f) For the purposes of this section, an emergency exists
131 when the promulgation of an emergency rule is necessary: (1)
132 For the immediate preservation of the public peace, health,
133 safety or welfare; (2) to comply with a time limitation
134 established by this code or by a federal statute or regulation;
135 or (3) to prevent substantial harm to the public interest.

**§29A-3-15a. Disapproval of emergency and provisional
legislative rules by the Secretary of State;
judicial review.**

1 (a) Upon the filing of an emergency rule or filing of an
2 amendment to an emergency rule by an agency, under the
3 provisions of section fifteen of this article, by any agency,
4 except for the Secretary of State, the Secretary of State shall
5 review such rule or such amendment and, within ~~forty-two~~
6 forty-five days of such filing, shall issue a decision as to
7 whether or not such emergency rule or such amendment to an
8 emergency rule should be disapproved. An emergency rule

9 filed by the Secretary of State shall be reviewed by the
10 Attorney General as provided in section fifteen-b of this
11 article.

12 (b) The Secretary of State shall disapprove an emergency
13 rule or an amendment to an emergency rule if he or she
14 determines:

15 (1) That the emergency rule or an amendment to the
16 emergency rule exceeds the scope of the law authorizing or
17 directing the promulgation thereof; or

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

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

24 (c) If the Secretary of State determines, based upon the
25 contents of the rule or the supporting information filed by the
26 agency, that the emergency rule should be disapproved, he or
27 she may disapprove such rule without further investigation,

28 notice or hearing. If, however, the Secretary of State
29 concludes that the information submitted by the agency is
30 insufficient to allow a proper determination to be made as to
31 whether the emergency rule should be disapproved, he or she
32 may make further investigation, including, but not limited to,
33 requiring the agency or other interested parties to submit
34 additional information or comment or fixing a date, time and
35 place for the taking of evidence on the issues involved in
36 making a determination under the provisions of this section.

37 (d) If the Secretary of State 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 disapproved, he
41 or she may disapprove such amendment without further
42 investigation, notice or hearing. If, however, the Secretary of
43 State concludes that the information submitted by the agency
44 is insufficient to allow a proper determination to be made as
45 to whether the amendment should be disapproved, he or she
46 may make further investigation, including, but not limited to,

47 requiring the agency or other interested parties to submit
48 additional information or comment or fixing a date, time and
49 place for the taking of evidence on the issues involved in
50 making a determination under the provisions of this section.

51 (e) The Secretary of State shall disapprove a provisional
52 legislative rule upon a finding that the rule was unlawfully
53 promulgated or that the provisional legislative rule or an
54 amendment thereto exceeds the scope of the law authorizing
55 the rule's promulgation.

56 ~~(e)~~ (f) The determination of the Secretary of State shall be
57 reviewable by the Supreme Court of Appeals under its
58 original jurisdiction, based upon a petition for a writ of
59 mandamus, prohibition or certiorari, as appropriate. Such
60 proceeding may be instituted by:

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

62 (2) A member of the Legislature; or

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

§29A-3-15b. Disapproval of emergency rules and provisional legislative rules by the Attorney General; judicial review.

1 (a) Upon the filing of an emergency rule or filing of an
2 amendment to an emergency rule by the Secretary of State
3 under the provisions of section fifteen of this article, the
4 Attorney General shall review such rule or such amendment
5 and, within ~~forty-two~~ forty-five days of such filing, shall
6 issue a decision as to whether or not such emergency rule or
7 such amendment to an emergency rule should be
8 disapproved.

9 (b) The Attorney General shall disapprove an emergency
10 rule or an amendment to an emergency rule if he or she
11 determines:

12 (1) That the emergency rule or an amendment to the
13 emergency rule exceeds the scope of the law authorizing or
14 directing the promulgation thereof; or

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

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

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

35 (d) If the Attorney General determines, based upon the
36 contents of the amendment to an emergency rule or the

37 supporting information filed by the agency, that the
38 amendment to the emergency rule should be disapproved, he
39 or she may disapprove such amendment without further
40 investigation, notice or hearing. If, however, the Attorney
41 General concludes that the information submitted by the
42 agency is insufficient to allow a proper determination to be
43 made as to whether the amendment should be disapproved, he
44 or she may make further investigation, including, but not
45 limited to, requiring the agency or other interested parties to
46 submit additional information or comment or fixing a date,
47 time and place for the taking of evidence on the issues
48 involved in making a determination under the provisions of
49 this section.

50 (e) The Attorney General shall disapprove a provisional
51 legislative rule upon a finding that the rule was unlawfully
52 promulgated or that the provisional legislative rule or an
53 amendment thereto exceeds the scope of the law authorizing
54 the rule's promulgation.

55 ~~(e)~~ (f) The determination of the Attorney General shall be
56 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. Such
59 proceeding may be instituted by:

- 60 (1) The Secretary of State;
- 61 (2) A member of the Legislature; or
- 62 (3) Any person whose personal property interests will be
63 significantly affected by the approval or disapproval of the
64 emergency rule by the Attorney General.