

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 522

BY SENATOR MAYNARD

[Introduced February 12, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §29A-1-3b of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §29A-3-5, §29A-3-8, §29A-3-12, and §29A-3-19 of said code, all
 3 relating generally to the Administrative Procedures Act; providing that rules become void
 4 if statutory authority is repealed; requiring agencies and boards to notify licensees of rule
 5 changes that include fee increases; providing that legislative exempt, procedural, or
 6 interpretive rules may be repealed by an agency upon notification to Secretary of State;
 7 relating to the deadline for filing agency-approved rules; providing that certain expiring
 8 final filed rules are not subject to comment period; and authorizing the Legislative Rule-
 9 Making Review Committee to begin reviewing final filed rules with sunset provisions on
 10 May 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3b. Void rules.

1 (a) If an agency ceases to exist, through the operation of law or by statute, any rules
 2 adopted or promulgated by the agency are void on the date the agency ceases to exist, unless
 3 the agency's rule-making power and its rules have been transferred to another agency

4 (b) Upon repeal or elimination of a statute that provides rulemaking authority, any rule
 5 adopted or promulgated by the agency pursuant to that statute is void.

ARTICLE 3. RULEMAKING.

§29A-3-5. Notice of proposed rulemaking.

1 When an agency proposes to promulgate a rule other than an emergency rule, it shall file
 2 with the Secretary of State, for publication in the State Register, a notice of its action, including
 3 therein any request for the submission of evidence to be presented on any factual determinations
 4 or inquiries required by law to promulgate such rule. At the time of filing the notice of its action,
 5 the agency shall also file with the Secretary of State a copy of the full text of the rule proposed

6 and a fiscal note as defined in subsection (b), section four of this article. If the agency is
7 considering alternative draft proposals, it may also file with the Secretary of State the full text of
8 such draft proposals.

9 The notice shall fix a date, time and place for the receipt of public comment in the form of
10 oral statements, written statements and documents bearing upon any findings and determinations
11 which are a condition precedent to the final approval by the agency of the proposed rule and shall
12 contain a general description of the issues to be decided. If no specific findings and determinations
13 are required as a condition precedent to the final approval by the agency of the approved rule,
14 the notice shall fix a date, time and place for the receipt of general public comment on the
15 proposed rule. To comply with the public comment provisions of this section, the agency may hold
16 a public hearing or schedule a public comment period for the receipt of written statements and
17 documents, or both.

18 If findings and determinations are a condition precedent to the promulgation of such rule,
19 then an opportunity for general public comment on the merits of the rule shall be afforded after
20 such findings and determinations are made. In such event, notice of the hearing or of the period
21 for receiving public comment on the proposed rule shall be attached to and filed as a part of the
22 findings and determinations of the agency when filed in the State Register.

23 In any hearing for public comment on the merits of the rule, the agency may limit
24 presentations to written material. The time, date and place fixed in the notice shall constitute the
25 last opportunity to submit any written material relevant to any hearing, all of which may be earlier
26 submitted by filing with the agency. After the public hearing or the close of the public comment
27 period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider,
28 any attempted ex parte communications directed to it in the form of additional comment prior to
29 the submission of its final agency-approved rule to the Legislative Rulemaking Review Committee
30 pursuant to the provisions of section eleven of this article.

31 The agency may also, at its expense, cause to be published as a Class I legal publication

32 in every county of the state any notice required by this section.

33 Any citizen or other interested party may appear and be heard at such hearings as are
34 required by this section.

35 Prior to the submission of a proposed rule to the Secretary of State, any agency or board
36 proposing a rule that includes a new or increased fee to its licensees, shall notify each licensee,
37 in writing.

38 Prior to the submission of any agency-approved proposed rule to the Secretary of State,
39 the agency shall respond to public comments received during the rulemaking process and explain
40 the reasoning for comments being incorporated or not incorporated into the rule. Failure to
41 adequately respond to public comments may be grounds for rejection of the proposed rule.

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

1 An agency shall consider a legislative exempt, procedural and interpretive rule for
2 adoption not later than six months after the close of public comment and file a notice of withdrawal
3 or adoption in the State Register within that period. An agency's failure to file the notice constitutes
4 withdrawal and the Secretary of State shall note the failure in the State Register immediately upon
5 the expiration of the six-month period.

6 A legislative exempt, procedural or interpretive rule may be amended by the agency prior
7 to final adoption without further hearing or public comment. The amendment may not change the
8 main purpose of the rule. If the fiscal implications have changed since the rule was proposed, the
9 agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including
10 any amendment, the agency shall file the text of the adopted legislative exempt, procedural or
11 interpretive rule with its notice of adoption in the State Register and the rule is effective on the
12 date specified in the rule or 30 days after the filing, whichever is later or as specified in this code.

13 An agency may repeal a legislative exempt, procedural, or interpretive rule by filing a
14 notice of repeal with the Secretary of State.

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

1 (a) No later than 40 days before the 60th day of each regular session of the Legislature,
2 the cochairmen of the legislative Rulemaking Review Committee shall submit to the clerk of the
3 respective houses of the Legislature copies of all proposed legislative rules which have been
4 submitted to and considered by the committee pursuant to the provisions of §29A-3-11 of this
5 code and which have not been previously submitted to the Legislature for study, together with the
6 recommendations of the committee with respect to such rules, a statement of the reasons for any
7 recommendation that a rule be amended or withdrawn and a statement that a bill authorizing the
8 legislative rule has been drafted by the staff of the committee or by Legislative Services pursuant
9 to §29A-3-11 of this code. The cochairman of the committee may also submit such rules at the
10 direction of the committee at any time before or during a special session in which consideration
11 thereof may be appropriate. Beginning in 2019, the committee may withhold from its report any
12 proposed legislative rule which was submitted to the committee fewer than 225 days before the
13 end of the regular session after the last Friday in July and beginning in 2021, and every inaugural
14 year thereafter, by the last Friday in August. The clerk of each house shall submit the report to
15 his or her house at the commencement of the next session.

16 All bills introduced authorizing the promulgation of a rule may be referred by the Speaker
17 of the House of Delegates and by the President of the Senate to appropriate standing committees
18 of the respective houses for further consideration or the matters may be otherwise dealt with as
19 each house or its rules provide. The Legislature may by act authorize the agency to adopt a
20 legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any
21 amendments which the Legislature shall designate. The clerk of the house originating such act
22 shall forthwith file a copy of any bill of authorization enacted with the Secretary of State and with
23 the agency proposing such rule and the clerk of each house may prepare and file a synopsis of
24 legislative action during any session on any proposed rule submitted to the house during such
25 session for which authority to promulgate was not by law provided during such session. In acting
26 upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment

27 or substitution, combine the separate bills of authorization insofar as the various rules authorized
28 therein are proposed by agencies which are placed under the administration of one of the single
29 separate executive departments identified under the provisions of §5F-1-2 of this code or the
30 Legislature may combine the separate bills of authorization by agency or agencies within an
31 executive department. In the case of rules proposed for promulgation by an agency which is not
32 administered by an executive department pursuant to the provisions of article two of said chapter,
33 the separate bills of authorization for the proposed rules of that agency may, by amendment or
34 substitution, be combined. The foregoing provisions relating to combining separate bills of
35 authorization according to department or agency are not intended to restrict the permissible
36 breadth of bills of authorization and do not preclude the Legislature from otherwise combining
37 various bills of authorization which have a unity of subject matter. Any number of provisions may
38 be included in a bill of authorization, but the single object of the bill shall be to authorize the
39 promulgation of proposed legislative rules.

40 (b) If the Legislature during its regular session disapproves all or part of any legislative
41 rule which was submitted to it by the Legislative Rulemaking Review Committee during such
42 session, no agency may thereafter issue any rule or directive or take other action to implement
43 such rule or part thereof unless and until otherwise authorized to do so, except that the agency
44 may resubmit the same or similar proposed rule to the Legislative Rulemaking Review Committee
45 in accordance with the provisions of §29A-3-11 of this code.

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

49 (d) Whenever the Legislature is convened by proclamation of the Governor, upon his or
50 her own initiative or upon application of the members of the Legislature, or whenever a regular
51 session of the Legislature is extended or convened by the vote or petition of its members, the
52 Legislature may by act enacted during such extraordinary or extended session authorize, in whole

53 or in part, any legislative rule, whether submitted to the Legislative Rulemaking Review
54 Committee or not, if legislative action on such rule during such session is a lawful order of
55 business.

56 (e) As a part of any act that amends chapter sixty-four of this code, authorizing the
57 promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general
58 language or with specificity, for the disapproval of rules not approved or acted upon by the
59 Legislature.

60 ~~(f) Whenever a date is required by this section to be computed in relation to the end of a~~
61 ~~regular session of the Legislature, such date shall be computed without regard to any extensions~~
62 ~~of such session occasioned solely by the proclamation of the Governor.~~

63 ~~(g) Whenever a date is required to be computed from or is fixed by the first day of a regular~~
64 ~~session of the Legislature, it shall be computed or fixed in 1984, and each fourth year thereafter~~
65 ~~without regard to the second Wednesday of January of such years.~~

§29A-3-19. Sunset provision in rules.

1 (a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall
2 include a sunset provision terminating the rule after five years: *Provided*, That the rule may be
3 renewed for additional terms of five years or less by the Legislature pursuant to the rule-making
4 procedures and authority in this article: *Provided, however*, That if a different sunset or termination
5 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's
6 provision shall control: *Provided further*, That this subsection shall not apply to rules promulgated
7 by the Department of Environmental Protection or emergency rules promulgated pursuant to
8 section fifteen of this article.

9 (b) Any legislative rule existing as of April 1, 2016, that is thereafter modified pursuant to
10 this article shall include a sunset provision as part of the modification setting forth a termination
11 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the
12 Legislature pursuant to the rule-making procedures and authority in this article: *Provided*,

13 *however*, That if a different sunset or termination provision exists in the statute under which the
14 proposed rule is promulgated, the enabling statute's provision shall control: *Provided further*, That
15 this subsection shall not apply to rules promulgated by the Department of Environmental
16 Protection or emergency rules promulgated pursuant to §29-A-3-15 of this code.

17 (c) The existence of a sunset provision terminating a rule shall not preclude the repeal of
18 such rule by the Legislature prior to the expiration of the sunset provision.

19 (d) As part of its rule review under this article, the Legislative Rulemaking Review
20 Committee is authorized to establish a procedure for timely review of rules prior to the expiration
21 for those agencies that have affirmatively sought renewal prior to expiration. The procedure may
22 include a requirement that the agency show cause as to why the expiring rule is required and
23 necessary to be continued for another term of years.

24 (e) The Secretary of State shall provide notice to the promulgating agency and the
25 Legislative Rulemaking Review Committee at least 18 months prior to every rule's expiration date.

26 (f) Final filed rules that are set to sunset, and have not been amended or changed, are not
27 subject to the comment period requirements contained in §29A-3-5 of this code. Beginning May
28 1, 2019, the Legislative Rulemaking Review Committee, as part of its rule review under this article,
29 is authorized to begin reviewing final filed rules.

NOTE: The purpose of this bill is to provide that rules become void if statutory authority repealed; require agencies and boards to notify licensees of rule changes that include fee increases; providing that legislative exempt, procedural or interpretive rules may be repealed by an agency upon notification to Secretary of State; provide that certain expiring final filed rules are not subject to comment period; and authorize the Legislative Rulemaking Review Committee to begin reviewing final filed rules with sunset provisions on May 1, 2019.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.