

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #7

FILED

1988 SEP -1 PM 2:46

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: State Fire Commission TITLE NUMBER: 87

CITE AUTHORITY: 29-3-5b

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐, NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 4

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

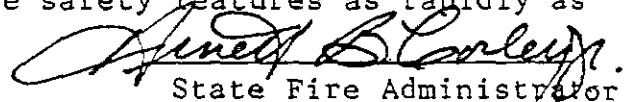
State Building Code

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

- The purpose of the building code, as stated in the authorizing legislation, is to improve the health, safety, and well-being of our citizens.
- State-of-the-art building construction, techniques, and materials has a direct impact upon the safety of the occupants; and the integrity and structural strength of a building.
- The state building code is expected to play a major role in the reduction of life and property losses due to fire.
- Assure the consumer that he/she is receiving a structure that has been constructed to and in compliance with a nationally developed and recognized standard.
- Life and property losses due to fire in West Virginia are one of the highest in the nation and all efforts should be made to institute long range efforts to protect our residents and to build-in fire safety features as rapidly as possible.

Use Additional Sheets If Necessary.

  
State Fire Administrator

TITLE 87  
LEGISLATIVE RULES  
STATE FIRE COMMISSION  
SERIES 4  
STATE BUILDING CODE

87-1-1 General

1.1 Scope: These rules and regulations establish the rules and regulations deemed necessary by the State Fire Commission for the safeguarding of life and property and to ensure the quality of construction of all structures erected or renovated throughout this state.

1.2 Authority: West Virginia State Code 29-3-5b.

1.3 Filing Date: September 1, 1988

1.4 Effective Date: September 1, 1988

1.5 Incorporation of other Documents: This state building code does not include a reprinting of all the requirements imposed by statute or by the incorporation of various nationally recognized standards and codes cited in Section 4.1 of these rules and regulations. For ascertaining these additional standards and requirements, it is necessary to make reference to said other documents.

87-1-2 DEFINITIONS

2.1 Building code, is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto.

2.2 Fire marshal, is intended to mean the West Virginia State Fire Marshal and/or his designated representatives.

2.3 Fire Commission, is intended to mean the West Virginia State Fire Commission assembled as a body.

2.4 Local jurisdiction, is intended to mean municipal or county level government.

2.5 State Building Code, is intended to mean the entire contents of these rules and regulations as filled by the Fire Commission, approved by the Legislative Rule Making Review Committee, and subsequently adopted by the West Virginia Legislature.

2.6 BOCA is the acronym for "Building Officials & Code Administrators International", 4051 Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

2.7 CABO is the acronym for the "Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia, 22041.

#### 87-1-3 Conflicts

3.1 Whenever there arises a conflict between the "state fire code" and the "state building code", the "state fire code" shall take precedent.

3.2 Whenever there arises a conflict between the "state building code" and statutory laws of the State of West Virginia, the West Virginia State Code shall take precedent.

#### 87-1-4 National standards and codes

4.1 The standards and requirements as set out and established by the following:

The BOCA National Building Code,  
Tenth Edition, 1987

The BOCA National Plumbing Code,  
Seventh Edition, 1987

The BOCA National Mechanical Code,  
Sixth Edition, 1987

The BOCA National Existing Structures Code,  
Second Edition, 1987

The BOCA National Energy Conservation Code  
Fifth Edition, 1987

The CABO One- and Two-Family Dwelling Code  
1986 Edition

The BOCA Basic/National Private Sewage Disposal Code  
First Edition, 1984

all as published by the Building Officials & Code Administrators International, and the Council of American Building Officials, shall have the same force and effect as if set out verbatim in these regulation and are hereby adopted and promulgated by the State Fire Commission as a part of the State Building Code.

4.3 A copy of the said respective codes as listed in Section 4.1 have been filed with the Secretary of State. These code books, collectively or separately, may be obtained by

contacting the Building Officials & Code Administrators International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60477-5795, telephone 312/700-2300; OR BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43229, telephone 614/890-1064.

87-1-5 Adoption by local jurisdiction

5.1 Each county or municipality intending to adopt the State Building Code shall notify the State Fire Commission of its intent in writing along with a copy of the local ordinance. Said documents shall be forwarded to the State Fire Administrator, West Virginia State Fire Commission, State Capitol Complex, Charleston, West Virginia 25305, within thirty (30) days of the adoption.

5.2 Each county or municipality which adopts the State Building Code shall have responsibility for the enforcement of said code as provided in West Virginia State Code 7-1-3n and 8-12-13.

87-1-6 Existing building codes

6.1 All building codes which have been adopted by local jurisdictions prior to the passage of 29-3-5b, shall be null and void one year following the effective date of the State Building Code.

87-1-7 Severability

7.1 The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect: Provided, that such remaining portions are not determined to be inseparable, and to this end these rules and regulations are declared separable.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

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Special Assistant

(Plus all the volunteer  
help we can get)

October 13, 1988

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Fire Commission

RULE: New Rule, Series 4; State Building Code

DATE FILED AS AN EMERGENCY RULE: September 1, 1988

DECISION NO. 19-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
KEN HECHLER  
Secretary of State

FILED  
1988 OCT 13  
3:30  
SECRETARY OF STATE

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Secretary of State

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Deputy Secretary of State

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1988 OCT 13 PM 3:30

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(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION  
(ERD 19-88)

AGENCY: Fire Commission

RULE: Amendment to Series 1, Particular Functions of the  
Commissioner of Highways

FILED AS AN EMERGENCY RULE: August 12, 1988

- par. 1 The Fire Commission has filed a new series 4 as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Fire Commission has filed this emergency rule with supporting documents with the Secretary of State on September 1, 1988 and with the LRMRC on September 1, 1988.

par. 7 It is the determination of the Secretary of State that the Fire Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §29-3-5b reads:

*§29-3-5b. Promulgation of rules, regulations and statewide building code.*

*(a) The state fire commission shall promulgate and repeal rules and regulations to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state pursuant to the provisions of chapter twenty-nine-a (29A-1-1 et seq.) of this code through the adoption of a state building code. Such rules, regulations, amendments or repeals thereof shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and shall have force and effect in this counties and municipalities adopting the state building code.*

*(b) Pursuant to the provisions of chapter twenty-nine-a of this code on the first day of July, 1988, the state fire commission shall commence promulgation of comprehensive rules and regulations regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a structure. Upon the completion of the promulgation of the rules and regulations, such rules and regulations shall be known as the "State Building Code".*

par. 9 It is the determination of the Secretary of State that the Fire Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(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.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Fire Commission are as follows:

The purpose of the building code, as stated in the authorizing legislation, is to improve the health, safety, and well-being of our citizens.

State-of-the-art building construction techniques and materials has a direct impact upon the safety of the occupants; and the integrity and structural strength of a building.

The state building code is expected to play a major role in the reduction of life and property losses due to fire.

Assure the consumer that he/she is receiving a structure that has been constructed to and in compliance with a nationally developed and recognized standard.

Life and property losses due to fire in West Virginia are one of the highest in the nation and all efforts should be made to institute long range efforts to protect our residents and to build-in fire safety features as rapidly as possible.

par. 13. It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 14 This decision shall be cited as Emergency Rule Decision 19-88 or ERD 19-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Fire Commission, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
SECRETARY OF STATE

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1988 OCT 13 PM 3:43  
SECRETARY OF STATE