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(Plus all the volunteer help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE April 9, 1990
ADMINISTRATIVE LAW DIVISION

April 9, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Human Rights Commission

RULE: Amendments, Series 1; Rules Regarding Discrimination Against the Handicapped

DATE FILED AS AN EMERGENCY RULE: February 26, 1990

DECISION NO. 3-90

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.

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DECISION EMERGENCY RULE DECISION
(ERD 3-90)

AGENCY: Human Rights Commission
RULE: Amendments, Series 1, Rules Regarding Discrimination Against the Handicapped
FILED AS AN EMERGENCY RULE: February 26, 1990

par. 1 Human Rights Commission has filed the above amendments to an existing emergency rule.

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 Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision 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 Human Rights Commissioner filed this emergency rule with supporting documents with the Secretary of State on February 26, 1990 and with the LRMRC on February 27, 1990.

par. 7 It is the determination of the Secretary of State that the Human Rights Commissioner 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 §5-11-8(h) reads:

§5-11-8(h). To do all other acts and deeds necessary to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of article three (§29A-3-1 et seq.), chapter twenty-nine-a of this code, implementing the powers and authority hereby vested in the commission.

par. 9 It is the determination of the Secretary of State that the Human Rights Commissioner 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 Human Rights Commissioner are as follows:

1. The previous rules regarding Discrimination Against the Handicapped were declared invalid by the West Virginia Supreme Court of Appeals in Chico Dairy Co. v. Human Rights Commission, 382 S.E.2d 75 (1090).

2. The proposed rule faithfully reflects the intention of the legislature regarding handicapped persons, as expressed in the 1989 amendments to the West Virginia Human Rights Act, W. Va. Code §5-11-1 et seq.

3. The proposed rule is necessary to assist all persons in understanding their rights, obligations and duties under the Human Rights Act, as amended.

4. Unless filed as an emergency rule, persons (including handicapped individuals, employers, landlords and owners of public accommodations) will be making critical legal decisions and facing potential legal liability, without benefit of the clear guidelines offered by the rules.

5. Failure to file the rule as an emergency rule would do substantial harm to the public interest in that persons may be held legally liable for acts of discrimination without full benefit of the guidelines and explanations of complex litigation offered by the rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency.

par. 14 This decision shall be cited as Emergency Rule Decision 3-90 or ERD 3-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Human Rights Commissioner, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
SECRETARY OF STATE

Entered April 9, 1990

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THE SECRETARY OF STATE
THIS DATE April 9, 1990
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