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June 17, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: HUMAN RIGHTS COMMISSION

RULE: NEW RULE, SERIES 7, RULES REGARDING DISCRIMINATION IN HOUSING

DATE FILED AS AN EMERGENCY RULE: MAY 29, 1992

DECISION NO. 12-92

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

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DECISION

EMERGENCY RULE DECISION
(ERD 12-92)

AGENCY: HUMAN RIGHTS COMMISSION
RULE: NEW RULE, SERIES 7, RULES REGARDING DISCRIMINATION IN HOUSING
FILED AS AN EMERGENCY RULE: MAY 29, 1992

par. 1 The Human Rights Commission (Commission) has filed the above new rule as an emergency rule.

par. 2 West Virginia Code 29A-3-a 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-a(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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State May 29, 1992 and with the LRMRC June 5, 1992.

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

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including promulgation of legislative rules in accordance with the provisions of §29A-3-1 et seq. of this code, implementing the powers and authority hereby vested in the commission.

par. 9 The WV Code further states in §5-11A-20:

In consultation with other appropriate agencies, the commission shall, not later than 180 days after the date of the enactment of this article, issue rules to implement it. Such rules may include provisions for the collection, maintenance and analysis of appropriate data to carry out this article. The commission shall comply with §29A-3-1 et seq of this code when promulgating rules.

par. 10 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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. 12 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. 13 The facts and circumstances as presented by the Commission are as follows:

1. In its 1992 session the WV Legislature enacted the West Virginia Fair Housing Act which the governor signed into law. The Act established a new statutory article (WV Code §5-11A-1 et seq.), which pursuant to WV Code §5-11A-9 is to be administered by the WV Human Rights Commission.
2. West Virginia Code §5-11A-20 provides that not later than 180 days after enactment of the WV Fair Housing Act the WV Human Rights Commission is to issue rules to implement the Act.
3. These proposed rules are written to implement the WV Fair Housing Act, and faithfully reflect the intent of the Legislature as expressed in the WV Fair Housing Act, WV Code §5-11A-1 et seq.
4. Unless filed as emergency rules, the WV Human Rights Commission cannot possibly meet the statutory requirement that rules implementing the Act be issued within 180 days of the enactment of the Act.
5. Unless filed as emergency rules, persons will be making critical legal decisions, and facing potential legal liability, without benefit of the clear guidelines offered by the rules.
6. Failure to file the rules as emergency rules would do substantial harm to the public interest in that persons may commit acts of unlawful discrimination, and be held liable for such acts, without full benefit of the guidelines offered by the rules.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation."

par. 15 This decision shall be cited as Emergency Rule Decision 12-92 or ERD 12-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Human Rights Commission, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

A.R.C.

Entered _____

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OFFICE OF
SECRETARY OF STATE