

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OCT 24 3 15 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

CITE AUTHORITY W. VA. CODE §47-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

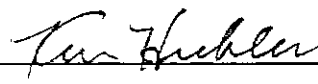
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 29

TITLE OF RULE BEING PROPOSED: TRADEMARKS AND SERVICE MARKS

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



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OCT 24 3 15 PM '96

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

SERIES 29
TRADEMARKS AND SERVICE MARKS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§153-29-1. General.

1.1. Scope. -- This legislative rule establishes the requirements for filing applications with the Secretary of State, for the approval of registration trademarks and service marks, and for the renewal, assignment, modification and cancellation of registration of those marks.

1.2. Authority. -- W. Va. Code §47-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§153-29-2. Application for New Registration.

2.1. An applicant shall apply for a new registration of a trademark or service mark not previously registered in the state on the form issued by the Secretary of State.

2.2. The application shall include the following:

2.2.a. A statement that the application is for a new registration of a trademark or service mark not previously registered;

2.2.b. The name of the applicant;

2.2.c. The business address of the applicant, which shall be an address at which mail can be received;

2.2.d. The state in which the corporation or partnership is organized if the applicant is a corporation or partnership;

2.2.e. The names of the general partners if the applicant is a partnership;

2.2.f. The type of goods or services on or in connection with which the trademark or service mark is used, including whether the use relates to goods or to services, a description of the goods or services, the mode or manner in which the mark is used, and the class of those good or services, as defined in section 6 of this rule;

2.2.g. Whether the trademark or service mark for which the application is made consists of a graphic symbol only, a graphic symbol including words or letters, words or letters in a specific typography, or words or letters only, without regard to typography;

2.2.h. A brief description of the trademark or service mark;

2.2.i. The date on which the trademark or service mark was first used in connection with a product or service anywhere, and the date on which the mark was first used in connection with a product or service in West Virginia;

2.2.j. A black and white drawing or representation of the trademark or service mark, which shall be placed on the standardized Attachment 1 of the application, labeled with the name of the applicant;

2.2.j.1. The representation shall be enlarged or reduced so that the longer dimension of the mark is no less than five inches and no more than six inches; and

2.2.j.2. If the applicant desires to designate specific colors in which the mark will appear, the applicant shall supply an additional copy labeled Attachment 1A with the areas of color labeled.

2.2.k. Three specimens showing the trademark or service mark as actually used, which shall be attached and marked Attachments 2, 3, and 4, respectively;

2.2.k.1. The specimens of the mark shall be two dimensional (flat), no larger than a standard 8 ½ by 11 inch page, and if smaller, shall be attached to a standard page.

2.2.k.2. The specimens may be actual samples of items in use if those samples are flat and no larger than specified in this subdivision, such as letterhead, labels, printed advertising or other similar items.

2.2.k.3. The specimens may be submitted as clear photographs or copies of photographs showing the item as it is used, but any photograph shall show all or substantially all of the item on which the mark is used.

2.2.k.4. If more than one classification of use is listed in the application, at least one specimen should be included for each class, with a minimum total number of three specimens.

2.2.l. Whether an application to register the trademark or service mark, or portions or a composite of the mark has been filed by the same applicant or a predecessor in interest with the United States Patent and Trademark Office. If the mark has been filed, the applicant shall give the date filed, the serial number of the registration, if any, and whether the application is pending, approved and the date approved, or refused and the reason for refusal;

2.2.m. A statement that the applicant is the owner of the trademark or service mark for the application is made, that the mark is in use, that to the applicant's knowledge, no other person has registered the mark, either federally or in the state, or has the right to use the mark either in the identical

form thereof or in such near resemblance to it as to be likely, when applied to the goods or services of that person, to cause confusion or to cause mistake or to deceive, and that the information contained in the application is true to the best of the applicant's knowledge; and

2.2.n. The date, name, title and signature of the applicant, acknowledged before a notary public.

2.3. The applicant shall submit a complete application with all required attachments to the Secretary of State along with the fee prescribed in subdivision 7.1.a. of this rule.

§153-29-3. Review and Approval of New Registration.

3.1. Upon receipt of an application for registration, the Secretary of State shall enter the received date and determine if the application is complete.

3.1.a. The Secretary of State shall cancel the received date stamp if the application is incomplete.

3.1.b. The Secretary of State shall return an incomplete application in its entirety to the applicant within five (5) days of receipt.

3.1.c. The Secretary of State shall refund the application fee to the applicant within sixty (60) days if a complete application is not resubmitted within thirty (30) days.

3.2. The Secretary of State shall evaluate the trademark or service mark in relation to prohibitions enumerated in W. Va. Code §47-2-2, and shall reject the application if the mark:

3.2.a. Consists of or comprises immoral, deceptive or scandalous matter;

3.2.b. Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

3.2.c. Consists of or comprises or contains the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

3.2.d. Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's specific written consent contained in an attachment to the application.

3.3. Unless the applicant provides, as an attachment to the application, proof that the trademark or service mark has become distinctive of the applicant's goods or services, and that the mark has been in continuous use in this state by the applicant for the five (5) years before the date of the application, the Secretary of State shall reject the mark if it:

3.3.a. Is merely descriptive or deceptively misdescriptive of the goods or services in connection with which the mark is used;

3.3.b. Is primarily geographically descriptive or deceptively misdescriptive of the goods or services; or

3.3.c. Is primarily a surname.

3.4. The Secretary of State shall reject the application if the mark consists of or comprises a mark registered in this state or a mark or trade name used by another and not abandoned, as to be likely, when used in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

3.4.a. When the mark consists of or contains words or letters, the Secretary of State shall reject the application if the words or letters are the same as or deceptively similar to the name of a registered domestic corporation, foreign corporation, domestic or foreign limited partnership or limited liability partnership or domestic or foreign limited liability company authorized to do business in this state at the time of the application for registration of the mark, or the reserved or registered name of any of these businesses, unless the application is made by the business or with the written permission of the business.

3.4.b. When the mark consists primarily of graphic elements, the Secretary of State shall examine currently registered marks for similarity in type, characterization, number and positions of figures, similarity in the use of geometric shapes or lines and the number or relations of those shapes or lines, and similarity in the combination of all element types.

3.4.c. When the mark consists of a combination of words or letters and graphic elements, the Secretary of State shall first examine the similarity of the words or letters, and if the words or letters are found to be registrable, shall then examine the graphic elements. If the graphic elements are found not to be registrable, the Secretary of State shall, depending on the degree of similarity, either reject the application or notify the applicant of the elements of the mark which must be removed or changed in order for the application to be registrable.

3.5. If the Secretary of State rejects the application or notifies the applicant of required changes, the Secretary of State shall notify the applicant of the reason for the rejection or required changes.

3.5.a. Upon rejection of a mark, the applicant has thirty (30) days in which to reply to the Secretary of State or to amend the application, and upon receipt of a reply or an amended application, the Secretary of State shall reexamine the mark.

3.5.b. If the applicant fails to respond to the rejection of the mark within the time allowed in subsection 3.6. of this rule, the Secretary of State shall consider the application to be abandoned.

3.5.c. The Secretary of State may finally refuse the application after two (2) periods of attempted amendment which do not result in an acceptable mark.

3.6. Upon acceptance of the application for registration, the Secretary of State shall enter the effective date of the registration, assign a registration number, and issue a certificate of registration.

§153-29-4. Renewal of Registration.

4.1. The registration of a trademark or service mark registered prior to July 1, 1996, expires on June 30, 2001, as provided in W. Va. Code §47-2-6(c), unless renewed before that date.

4.2. The registration of a mark first registered after July 1, 1996, expires ten (10) years following the effective date of registration.

4.3. The Secretary of State may attempt to notify current registrants of an impending registration expiration and provide forms for the application for renewal of a mark, but the registrant is responsible for obtaining the proper form and submitting a complete application for renewal in a timely manner.

4.4. The application shall be submitted on the forms prescribed by the Secretary of State.

4.5. The applicant may submit the application for renewal within the six (6) months immediately before the expiration of the current registration.

4.5.a. The Secretary of State shall return an application for renewal submitted more than six (6) months before the expiration of the registration; except that:

4.5.b. A registrant holding a mark registered before July 1, 1996, may apply for renewal under the provisions of the new law at any time before the expiration of the previous registration on June 30, 2001.

4.6. Upon the receipt of a complete application for renewal, including a verified statement that the mark has been and is still in use, and the submission of the required fee as provided in subdivision 7.1.2. of this rule, the Secretary of State shall issue a certificate of registration renewal.

§153-29-5. Assignments, Changes and Cancellation.

5.1. A registrant may assign the trademark or service mark to another person, record a change of name, or record other instruments relating to the mark or pending application. To assign the mark, the registrant or assignee shall file an instrument in writing signed by the registrant and notarized, either as an original document or a photocopy certified by any of the parties as a true and correct copy of the original. The filing shall be accompanied by the required fee as provided in subdivision 7.1.3. of this rule.

5.2. A registrant may record an assignment of the mark to another person with the Secretary of State, and the secretary shall issue in the name of the assignee or successor in interest a new certificate for the remainder of the term of the registration or renewal.

5.3. A registrant or applicant whose name is changed during the period of registration or application may record a certificate of change of name with the Secretary of State.

5.4. Upon filing the change of name, the Secretary of State shall issue a registrant a certificate for the remainder of the term in the new name, and shall attach the change of name to the application.

5.5. The registrant or successor in interest may voluntarily cancel the registration of a mark upon filing of an request signed by the registrant or authorized representative of the registrant or successor in interest and acknowledged before a notary public, providing the request is accompanied by the required fee as provided in subdivision 7.1.3. of this rule.

§153-29-6. Classification of Goods and Services.

6.1. Goods shall be classified according the system established by the United States Patent and Trademark Office, as follows:

6.1.a. Chemicals products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; and adhesive substances used in industry;

6.1.b. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; coloring matters and dyestuffs; mordants; natural resins; and metals in foil and powder form for painters and decorators;

6.1.c. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; and dentifrices;

6.1.d. Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; and candles, tapers, night lights and wicks;

6.1.e. Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' food; plasters and material for bandaging; material for stopping teeth, dental wash and disinfectants; and preparations for killing weeds and destroying vermin;

6.1.f. Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, and rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (nonelectric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; and ores;

6.1.g. Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; and incubators;

6.1.h. Hand tools and instruments; cutlery, forks, and spoons; and side arms;

6.1.i. Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counter feed apparatus; talking machines; cash registers; calculating machines; and fire extinguishing apparatus;

6.1.j. Surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes and teeth);

6.1.k. Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes;

6.1.l. Vehicles; and apparatus for locomotion by land, air or water;

6.1.m. Firearms; ammunition and projectiles; explosive substances; and fireworks;

6.1.n. Precious metals and their alloys and goods in precious metals or coated with precious metals (except cutlery, forks and spoons); and jewelry, precious stones, horological and other chronometric instruments;

6.1.o. Musical instruments (other than talking machines and wireless apparatus);

6.1.p. Paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, and books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and cliches (stereotype);

6.1.q. Gutta percha, india rubber, balata and substitutes, and articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, for use in manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; and hose pipes (nonmetallic);

6.1.r. Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, and hides; trunks and traveling bags; umbrellas, parasols and walking sticks; and whips, harness and saddlery;

6.1.s. Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; road making materials; asphalt, pitch and bitumen; portable buildings; stone monuments; and chimney pots;

6.1.t. Furniture, mirrors, and picture frames; and articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum celluloid, and substitutes for all these materials, or of plastics;

6.1.u. Small domestic utensils and containers (not of precious metals, or coated with precious metals); combs and sponges; brushes (other than paint brushes); brush making materials; instruments and material for cleaning purposes, and steel wool; unworked or semi-worked glass (excluding glass used in building); and glassware, porcelain and earthenware, not included in other classes;

6.1.v. Ropes, string, nets, tents, awnings, tarpaulins, sails, and sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); and raw fibrous textile materials;

6.1.w. Yarns and threads;

6.1.x. Tissues (piece goods); bed and table covers; and textile articles not included in other classes;

6.1.y. Clothing, including boots, shoes and slippers;

6.1.z. Lace and embroidery, ribands, and braid; buttons, press buttons, hooks and eyes, and pins and needles; and artificial flowers;

6.1.aa. Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; and wall hangings (nontextile);

6.1.bb. Games and playthings; gymnastic and sporting articles (except clothing); and ornaments and decorations for Christmas trees;

6.1.cc. Meats, fish, poultry and game; meat extracts; preserved, and dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; and preserves and pickles;

6.1.dd. Coffee, tea, cocoa, sugar, rice, tapioca, sago and coffee substitutes; flour and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery and ices; honey and treacle; yeast and baking powder; salt, mustard, pepper, vinegar, sauces and spices; and ice;

6.1.ee. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; and foodstuffs for animals and malt;

6.1.ff. Beer, ale and porter; mineral and aerated waters and other nonalcoholic drinks; and syrups and other preparations for making beverages;

6.1.gg. Wines, spirits and liqueurs; and

6.1.hh. Tobacco, raw or manufactured; smokers' articles; and matches.

6.2. Services shall be classified according the system established by the United States Patent and Trademark Office, as follows:

6.2.a. Advertising and business;

6.2.b. Insurance and financial;

6.2.c. Construction and repair;

6.2.d. Communication;

6.2.e. Transportation and storage;

6.2.f. Material treatment;

6.2.g. Education and entertainment; and

6.2.h. Miscellaneous.

§153-29-7. Fees.

7.1. The fees for filing documents under this rule as provided by W. Va. Code §47-2-17 are:

7.1.a. For registration of a new trademark or service mark involving not more than two classifications, fifty dollars, and for each additional classification, fifty dollars;

7.1.b. For renewal of a previously registered trademark or service mark involving not more than two classifications, fifty dollars, and for each additional classification, fifty dollars;

7.1.3. For recording any assignment, change of name, other document, or cancellation as provided in section 5 of this rule, twenty-five dollars.

7.2. All fees shall be made payable to the Secretary of State.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Secretary of State

Subject: Trademarks and Service Marks

PERTINENT DATES

Filed for public comment: July 31, 1996
Public comment period ended: August 30, 1996
Filed following public comment period: August 30, 1996
Filed LRMRC: August 30, 1996
Filed as emergency:

Fiscal Impact: \$9,500 increase for the current fiscal year;
\$5,500 the next year; and \$5,000 annually thereafter

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 sets forth the information which must be included in or with an application for a new registration of a trademark or a service mark not previously registered in the State.

Section 3 provides for the approval or disapproval of an application by the Secretary of State. It sets forth the statutory provisions that set forth reasons for which a trademark or a service mark may be rejected. The Secretary of State is required to notify the applicant regarding the reason for rejection of or required amendment of the trademark or service mark. The applicant has 30 days to respond to the notice or amend the application.

Section 4 relates to renewal of registration. It provides that the registration of all trademarks or service marks registered prior to July 1, 1996, expire on June 30, 2001 and those registered after July 1, 1996, expire ten years following the effective date of registration. It also specifies when a registrant may apply for renewal.

Section 5 provides for the assignment, change or cancellation of a trademark or service mark.

Section 6 classifies goods and services according to the system established by the United States Patent and Trademark Office.

Section 7 sets fees for the filing of documents.

Attachment 1 contains the application and instructions for completing the application.

AUTHORITY

Statutory authority: W.Va. Code, §47-2-10, which provides, in part, as follows:

The secretary shall, by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code, establish a classification of goods and services for convenience of administration of this article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office. Until approved by the Legislature, the secretary may effect the purposes of this section by emergency rule.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Counsel found several inconsistencies between Section 4 of the proposed rule and WVC §47-2-6.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has several technical modifications to suggest including the suggestion that the form and the attachments to the form be deleted from the proposed rule. Otherwise any time the form is amended, it would have to go through the legislative rule-making process.

Senate Bill No. 211

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate a
14 legislative rule relating to trademarks and service
15 marks.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section two, article nine, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
22 BOARDS TO PROMULGATE LEGISLATIVE RULES.

23 §64-9-2. Secretary of state.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on the twelfth day of January, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section thirteen, article two, chapter three of this code,
5 modified by the secretary of state to meet the objections
6 of the legislative rule-making review committee and refiled
7 in the state register on the twenty-second day of June, one
8 thousand nine hundred ninety-five, relating to the
9 secretary of state (agencies designated to provide voter
10 registration services, 153 CSR 28), ~~are~~ is authorized.

11 (b) The legislative ~~rules~~ rule filed in the state
12 register on the twenty-fifth day of July, one thousand nine
13 hundred ninety-five, authorized under the authority of
14 section six, article one-a, chapter three of this code,
15 modified by the secretary of state to meet the objections
16 of the legislative rule-making review committee and refiled
17 in the state register on the twenty-third day of January,
18 one thousand nine hundred ninety-six, relating to the
19 secretary of state (guidelines for the use of nicknames and
20 other designations on the ballot, 153 CSR 14), ~~are~~ is
21 authorized.

22 (c) The legislative ~~rules~~ rule filed in the state
23 register on the twenty-eighth day of July, one thousand

1 nine hundred ninety-five, authorized under the authority of
2 section six, article one-a, chapter three of this code,
3 modified by the secretary of state to meet the objections
4 of the legislative rule-making review committee and refiled
5 in the state register on the eighth day of December, one
6 thousand nine hundred ninety-five, relating to the
7 secretary of state (procedures for canvassing electronic
8 ballot elections using punch card or optical scan ballots,
9 153 CSR 18), ~~are~~ is authorized.

10 (d) The legislative ~~rules~~ rule filed in the state
11 register on the twenty-fifth day of July, one thousand nine
12 hundred ninety-five, authorized under the authority of
13 section six, article one-a, chapter three of this code,
14 modified by the secretary of state to meet the objections
15 of the legislative rule-making review committee and refiled
16 in the state register on the twenty-fourth day of January,
17 one thousand nine hundred ninety-six, relating to the
18 secretary of state (absentee voting by military voters who
19 are members of reserve units called to active duty, 153 CSR
20 23), ~~are~~ is authorized.

21 (e) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-sixth day of July, one thousand nine
23 hundred ninety-five, authorized under the authority of

1 section six, article one-a, chapter three of this code,
2 modified by the secretary of state to meet the objections
3 of the legislative rule-making review committee and refiled
4 in the state register on the twenty-fourth day of January,
5 one thousand nine hundred ninety-six, relating to the
6 secretary of state (numbered divisions for the election of
7 circuit judges, 153 CSR 24), ~~are~~ is authorized.

8 (f) The legislative ~~rules~~ rule filed in the state
9 register on the twenty-sixth day of July, one thousand nine
10 hundred ninety-five, ~~authorized~~ under the authority of
11 section three, article two, chapter three of this code,
12 relating to the secretary of state (combined voter
13 registration and driver licensing fund, 153 CSR 25), ~~are~~
14 is authorized.

15 (g) The legislative ~~rules~~ rule filed in the state
16 register on the twenty-sixth day of July, one thousand nine
17 hundred ninety-five, ~~authorized~~ under the authority of
18 section six, article one-a, chapter three of this code,
19 relating to the secretary of state (official election forms
20 and vendor authorization, 153 CSR 26), ~~are~~ is authorized.

21 (h) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-sixth day of July, one thousand nine
23 hundred ninety-five, authorized under the authority of

1 section six, article one-a, chapter three of this code,
2 modified by the secretary of state to meet the objections
3 of the legislative rule-making review committee and refiled
4 in the state register, on the twenty-fourth day of January,
5 one thousand nine hundred ninety-six, relating to the
6 secretary of state (procedures for handling ballots and
7 counting write-in votes in counties using punch card or
8 optical scan ballots, 153 CSR 27), ~~are~~ is authorized.

9 (i) The legislative ~~rules~~ rule filed in the state
10 register on the twenty-seventh day of July, one thousand
11 nine hundred ninety-five, authorized under the authority of
12 section six, article two, chapter twenty-nine-a of this
13 code, modified by the secretary of state to meet the
14 objections of the legislative rule-making review committee
15 and refiled in the state register on the twenty-second day
16 of January, one thousand nine hundred ninety-six, relating
17 to the secretary of state (standard size and format for
18 rules and procedures for publication of the state register,
19 153 CSR 6), ~~are~~ is authorized, with the amendments set
20 forth below:

21 "On page ten, subsection 13.1, after the word 'format'
22 by inserting a comma and the words 'following all
23 formatting rules of the Secretary of State,';

1 On page ten, paragraph 13.1.b, by striking out the
2 word 'double' and inserting in lieu thereof the word
3 'high';

4 On page ten, after subparagraph 13.1.b.2, by adding a
5 new subsection to read as follows:

6 '13.2. If an agency does not comply with the
7 formatting as specified by the Secretary of State, the
8 electronic version will be refused and sent back for
9 correction to the agency'."

10 (j) The legislative rule filed in the state register
11 on the thirtieth day of August, one thousand nine hundred
12 ninety-six, authorized under the authority of section ten,
13 article two, chapter forty-seven, of this code, modified by
14 the secretary of state to meet the objections of the
15 legislative rule-making review committee and refiled in the
16 state register on the twenty-fourth day of October, one
17 thousand nine hundred ninety-six, relating to the secretary
18 of state (trademarks and service marks, 153 CSR 29), is
19 authorized.

20

21 NOTE: The purpose of this bill is to authorize the
22 Secretary of State to promulgate a legislative rule
23 relating to Trademarks and Service Marks.

24

25 Strike-throughs indicate language that would be

1 stricken from the present law, and underscoring indicates
2 new language that would be added.

1 Bill-SOS, Trademark (By Delegate(s) Douglas, Hunt, Compton,
2 Faircloth, Linch and Riggs)

3
4 [Introduced March 3, 1997; referred to the
5 Committee on the Judiciary.]

6
7
8
9
10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate a
14 legislative rule relating to trademarks and service
15 marks.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section two, article nine, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
22 BOARDS TO PROMULGATE LEGISLATIVE RULES.

23 §64-9-2. Secretary of state.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on the twelfth day of January, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section thirteen, article two, chapter three of this code,
5 modified by the secretary of state to meet the objections
6 of the legislative rule-making review committee and refiled
7 in the state register on the twenty-second day of June, one
8 thousand nine hundred ninety-five, relating to the
9 secretary of state (agencies designated to provide voter
10 registration services, 153 CSR 28), ~~are~~ is authorized.

11 (b) The legislative ~~rules~~ rule filed in the state
12 register on the twenty-fifth day of July, one thousand nine
13 hundred ninety-five, authorized under the authority of
14 section six, article one-a, chapter three of this code,
15 modified by the secretary of state to meet the objections
16 of the legislative rule-making review committee and refiled
17 in the state register on the twenty-third day of January,
18 one thousand nine hundred ninety-six, relating to the
19 secretary of state (guidelines for the use of nicknames and
20 other designations on the ballot, 153 CSR 14), ~~are~~ is
21 authorized.

22 (c) The legislative ~~rules~~ rule filed in the state
23 register on the twenty-eighth day of July, one thousand

1 nine hundred ninety-five, authorized under the authority of
2 section six, article one-a, chapter three of this code,
3 modified by the secretary of state to meet the objections
4 of the legislative rule-making review committee and refiled
5 in the state register on the eighth day of December, one
6 thousand nine hundred ninety-five, relating to the
7 secretary of state (procedures for canvassing electronic
8 ballot elections using punch card or optical scan ballots,
9 153 CSR 18), ~~are~~ is authorized.

10 (d) The legislative ~~rules~~ rule filed in the state
11 register on the twenty-fifth day of July, one thousand nine
12 hundred ninety-five, authorized under the authority of
13 section six, article one-a, chapter three of this code,
14 modified by the secretary of state to meet the objections
15 of the legislative rule-making review committee and refiled
16 in the state register on the twenty-fourth day of January,
17 one thousand nine hundred ninety-six, relating to the
18 secretary of state (absentee voting by military voters who
19 are members of reserve units called to active duty, 153 CSR
20 23), ~~are~~ is authorized.

21 (e) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-sixth day of July, one thousand nine
23 hundred ninety-five, authorized under the authority of

1 section six, article one-a, chapter three of this code,
2 modified by the secretary of state to meet the objections
3 of the legislative rule-making review committee and refiled
4 in the state register on the twenty-fourth day of January,
5 one thousand nine hundred ninety-six, relating to the
6 secretary of state (numbered divisions for the election of
7 circuit judges, 153 CSR 24), ~~are~~ is authorized.

8 (f) The legislative ~~rules~~ rule filed in the state
9 register on the twenty-sixth day of July, one thousand nine
10 hundred ninety-five, authorized under the authority of
11 section three, article two, chapter three of this code,
12 relating to the secretary of state (combined voter
13 registration and driver licensing fund, 153 CSR 25), ~~are~~
14 is authorized.

15 (g) The legislative ~~rules~~ rule filed in the state
16 register on the twenty-sixth day of July, one thousand nine
17 hundred ninety-five, authorized under the authority of
18 section six, article one-a, chapter three of this code,
19 relating to the secretary of state (official election forms
20 and vendor authorization, 153 CSR 26), ~~are~~ is authorized.

21 (h) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-sixth day of July, one thousand nine
23 hundred ninety-five, authorized under the authority of

1 section six, article one-a, chapter three of this code,
2 modified by the secretary of state to meet the objections
3 of the legislative rule-making review committee and refiled
4 in the state register on the twenty-fourth day of January,
5 one thousand nine hundred ninety-six, relating to the
6 secretary of state (procedures for handling ballots and
7 counting write-in votes in counties using punch card or
8 optical scan ballots, 153 CSR 27), ~~are~~ is authorized.

9 (i) The legislative rules rule filed in the state
10 register on the twenty-seventh day of July, one thousand
11 nine hundred ninety-five, authorized under the authority of
12 section six, article two, chapter twenty-nine-a of this
13 code, modified by the secretary of state to meet the
14 objections of the legislative rule-making review committee
15 and refiled in the state register on the twenty-second day
16 of January, one thousand nine hundred ninety-six, relating
17 to the secretary of state (standard size and format for
18 rules and procedures for publication of the state register,
19 153 CSR 6), ~~are~~ is authorized, with the amendments set
20 forth below:

21 "On page ten, subsection 13.1, after the word 'format'
22 by inserting a comma and the words 'following all
23 formatting rules of the Secretary of State,';

1 On page ten, paragraph 13.1.b, by striking out the
2 word 'double' and inserting in lieu thereof the word
3 'high';

4 On page ten, after subparagraph 13.1.b.2, by adding a
5 new subsection to read as follows:

6 '13.2. If an agency does not comply with the
7 formatting as specified by the Secretary of State, the
8 electronic version will be refused and sent back for
9 correction to the agency'."

10 (j) The legislative rule filed in the state register
11 on the thirtieth day of August, one thousand nine hundred
12 ninety-six, authorized under the authority of section ten,
13 article two, chapter forty-seven, of this code, modified by
14 the secretary of state to meet the objections of the
15 legislative rule-making review committee and refiled in the
16 state register on the twenty-fourth day of October, one
17 thousand nine hundred ninety-six, relating to the secretary
18 of state (trademarks and service marks, 153 CSR 29), is
19 authorized.

20

21 NOTE: The purpose of this bill is to authorize the
22 Secretary of State to promulgate a legislative rule
23 relating to Trademarks and Service Marks.

24

25 Strike-throughs indicate language that would be

1. ~~stricken from the present law~~, and underscoring indicates
2. new language that would be added.