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SECRETARY OF STATE

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August 24, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Workforce West Virginia

RULE: New Rule, 96CSR3

DATE FILED AS AN EMERGENCY RULE: July 31, 2009

DECISION NO. 14-09

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

A handwritten signature in black ink, appearing to read "Natalie E. Tennant", is written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 14-09)

AGENCY: Workforce West Virginia
RULE: New Rule, 96CSR3
FILED AS AN EMERGENCY RULE: July 31, 2009

- par. 1 The Workforce West Virginia (WWW) has filed the above new rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 WWW filed this emergency rule with supporting documents with the Secretary of State July 31, 2009 and with the LRMRC July 31, 2009.
- par. 7 It is the determination of the Secretary of State that the WWW has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority – W. Va. Code §21A-1-4(d) reads:
- (d) The Executive Director of Workforce West Virginia shall establish an employer violator system to identify individuals and employers who are in default on any assessment, surcharge, tax or penalty owed to the fund. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the executive director, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the fund or has entered into and remains in*

compliance with a repayment agreement. The employer violator system shall work cooperatively with all state agencies to maintain an accurate, up-to-date list of violators which shall be available in electronic format and online for agencies and the public. Before an employer is added to the violator list, he or she shall be given notice and an opportunity for an expedited administrative hearing. The executive director shall propose for promulgation emergency and legislative rules to effectuate this subsection.

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

par. 10 (C) Emergency – W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) 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 WWW are as follows:

WV Code §21A-1-4(d) passed April 11, 2009 & in effect from passage mandates an emergency rule to effectuate this subsection. The emergency rule mandates how the Executive Director of Workforce West Virginia establishes an employer violator system or list to identify for the public & other state agencies, individuals & employers who are in default on any assessment, surcharge, tax or penalty owed to the employment compensation fund. It also establishes due process rights for individuals & employers who are incorrectly placed on the employer violator list.

par. 13 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(f). . . prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 14-09 or ERD 14-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Workforce West Virginia, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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