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OFFICE OF THE SECRETARY OF STATE

Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

November 1, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia State Athletic Commission

RULE: New Rule, 177CSR2, Administrative Rules of the West Virginia State Athletic Commission Regulating Mixed Martial Arts

DATE FILED AS AN EMERGENCY RULE: September 21, 2011

DECISION NO. 13-11

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 that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 13-11)

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RULE: New Rule, 177CSR2, Administrative Rules of the West Virginia State Athletic Commission Regulating Mixed Martial Arts
FILED AS AN EMERGENCY RULE: September 21, 2011

- par. 1 The West Virginia State Athletic Commission (Commission) 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 Commission filed this emergency rule with supporting documents with the Secretary of State September 21, 2011 and with the LRMRC September 21, 2011.
- par. 7 It is the determination of the Secretary of State that the Commission 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 §29-5A-3a(f) reads:

§29-5A-3a. Power to regulate mixed martial arts.

(f) The commission shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this section, including:

par. 9 It is the determination of the Secretary of State that the Commission 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 Commission are as follows:

On March 12, 2011 the West Virginia Legislature passed the Enrolled Committee Substitute for H.B. 2562 which legalized Mixed Martial Arts in this State. Prior to the passage of H.B. 2562, mixed martial arts was prohibited in this State. The Legislature passed a sparse outline authorizing Mixed Martial Arts and directed the Athletic Commission to adopt legislative rules governing the sport. H.B. 2562 was silent regarding whether the Athletic Commission can file emergency rules.

Nevertheless, the facts and circumstances require the filing of emergency rules for the review and approval of the Secretary of State. H.B. 2562 became effective on June 12, 2011. The obvious intent of the West Virginia Legislature was to allow the practice of Mixed Martial Arts after the bill became effective. Since the sport is new to West Virginia, there are no rules in place today governing the practice of Mixed Martial Arts in this State.

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By law, an emergency which may justify the use of an emergency rule is defined as:

For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest.

WV Code § 29A-3-15(f)(3).

H.B. 2562 specifically directed the Athletic Commission to propose legislative rules which inter alia adopt the unified rules of mixed martial arts, limit or restrict the practice of Mixed Martial Arts as necessary to guarantee the safety of participants, and to enact provisions for the fair and honest conduct of MMA events. See WV Code § 29-5A-3a(f). The Athletic Commission filed proposed legislative rules with the Secretary of State's Office for review and consideration by the Legislative Rule Making Review Committee on June 17, 2011. However, the legislative rules are only at the beginning of the review and adoption process. The proposed legislative rules will not take effect until the spring of 2012 at the earliest. At the present time, there are no rules in effect in West Virginia to accomplish any of the mandatory requirements imposed by statute.

Assume for the sake of argument that a promoter wants to conduct a Mixed Martial Arts event in West Virginia. Until the West Virginia Legislature approves the legislative rules next spring, the Athletic Commission has no jurisdictional basis to regulate a combative sport. As of today, the Athletic Commission has no standards in place to license MMA fighters and promoters. The Athletic Commission has no authority in place to impose and collect licensing fees for MMA fighters, promoters, seconds, managers, and referees. The Athletic Commission has no authority to impose a bonding requirement to ensure that MMA fighters, seconds, managers, other fight related participants, and the related medical expenses of injured fighters be paid. No standards exist requiring MMA promoters to even provide medical insurance coverage for MMA fighters.

Since no rules are in effect, two possibilities exist. First, the MMA event must be prohibited since there are no rules or regulations governing the sport. Prohibiting the practice of Mixed Martial Arts after H.B. 2655 has become effective would seem to directly contradict the clear will of the Legislature in authorizing the sport. Second, the MMA event could take place without any regulation by the Athletic Commission for competition and safety. Without any legislative rules in effect, the MMA promoter would have no guidance from the Athletic Commission regarding the rules of competition and safety concerns. The MMA promoter would not be required to employ the Unified Rules of MMA as adopted by the Association of Boxing Commissions which the Legislature mandated the Athletic Commission to adopt by regulation. The MMA promoter would be free to employ any rules he chooses to employ and to follow or ignore the safety concerns in the Unified Rules. The proposed legislative rules prohibit minors from competing in MMA events; absent

emergency rules, a promoter would be free to hold events with juvenile MMA fighters. The proposed legislative rules prohibit amateur MMA events in West Virginia; without the emergency rules an amateur MMA event could be held in a school gymnasium, a bar, or a parking lot.

The existing Athletic Commission Legislative Rules for boxing do not readily translate into the practice of Mixed Martial Arts any more than the rules of football would apply to a basketball game. For example, Mixed Martial Arts include elements of grappling in which the competitors may go to the ground and fight for domination over the opponent. See WV Code § 29-5A-3a(b) (defining the term Mixed Martial Arts). The existing legislative rules for boxing specifically prohibit one boxer from striking another boxer while he is down on the canvas. See 177 CSR 1 § 177-1-32.2. Any boxer who is knocked down must take a mandatory eight count before the fight can continue. See 177 CSR 1 § 177-1-31.6. However, Mixed Martial Arts contestants are permitted to attack an opponent who is knocked down; imposing a similar interruption in Mixed Martial Arts would severely alter the nature of the sport. Mixed Martial Arts allows the striking of an opponent with the elbow which is specifically prohibited under the boxing rules. See 177 CSR 1 § 177-1-32.8. Consequently, legal blows in a Mixed Martial Arts contest are prohibited by the only set of Athletic Commission Rules in effect today. Boxing gloves must be a minimum of eight ounces in weight for weight classes of 154 pounds or less while weight classes for boxers weighing more than 154 pounds must use gloves weighing a minimum of ten ounces. See 177 CSR 1 § 177-1-38.1. The general standard in Mixed Martial Arts is that the gloves must weigh a minimum of four ounces. The lighter glove weight is necessary due to the fact that MMA contestants use their hands to grab and control their opponents in the ring. Boxing generally prohibits one boxer from holding his opponent. See 177 CSR 1 § 177-1-32.3. The application of the existing boxing rules to Mixed Martial Arts would severely alter the nature of the sport in West Virginia. Therefore, Mixed Martial Arts contestants cannot effectively engage in a sport which the West Virginia Legislature has specifically authorized in this State.

Mixed Martial Arts is a combative sport. Without emergency rules in effect, Mixed Martial Arts may be conducted without any oversight regarding the terms of competition and safety. The absence of any regulations to ensure fair and honest competition in these events and to protect the safety of the participants constitutes an emergency pursuant WV Code § 29A-3-15(3)(f).

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). . . "immediate preservation of public peace, health, safety or welfare" and "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 13-11 or ERD 13-11 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Athletic Commission, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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