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(Plus all the volunteer
help we can get)

December 9, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

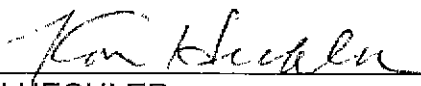
AGENCY: ALCOHOL BEVERAGE CONTROL ADMINISTRATION

RULE: AMENDMENTS, SERIES 5, LICENSING OF RETAIL LIQUOR STORES

DATE FILED AS AN EMERGENCY RULE: NOVEMBER 23, 1999

DECISION NO. 20-99

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.


KEN HECHLER
Secretary of State

OFFICE OF THE SECRETARY OF STATE
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EMERGENCY RULE DECISION
(ERD 20-99)

AGENCY: ALCOHOL BEVERAGE CONTROL ADMINISTRATION
RULE: AMENDMENTS, SERIES 5, LICENSING OF RETAIL LIQUOR STORES

FILED AS AN EMERGENCY RULE: NOVEMBER 23, 1999

- par. 1 The Alcohol Beverage Control Administration (ABCA) has filed the above amendments to an existing 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 ABCA filed this emergency rule with supporting documents with the Secretary of State November 23, 1999 and with the LRMRC November 23, 1999.

par. 7 It is the determination of the Secretary of State that the ABCA 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 §60-3A-6(c)(2) reads:

Adopt, amend or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance with the provisions of §29A-1-1 et seq. of this code.

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

This rule explains and clarifies the impact of HB 3023, which was enacted on March 13, 1999 and made effective from passage, on W. Va. Code §60-3A-1 et seq., the "State Retail Liquor License Act." This Act was established by the 1990 Legislature, Chapter 9 and was designed to take the State out of the retail sale of distilled spirits, but to keep it in the wholesale sale of such beverages. Franchises for 10-years were sold to the highest bidders and retail liquor stores were licensed in 98 market zones. These franchises expire on June 30, 2000.

HB 3023 set in motion a method of selling new 10-year franchises to become effective on July 1, 2000. It also made extensive changes in the law relating to the creation of a State Retail Liquor Licensing Board and assigned it a multitude of duties; the improvement of bidding procedures; establishing a method of creating bid minimums; authorizing the Board to determine the number types of licenses which would be authorized in each market zone; authorizing current licensees a

preference and continuing a preference for bidders who are West Virginia residents; the implementation of all of which required expert collection and evaluation of data by professional CPA firms.

Bids were taken from many firms and an award to the winner was made on August 10, 1999. A contract attorney was selected to write amendments to existing regulations. On August 6, 1999, which was the deadline for submitting legislative rules to the LRMRC, there was an inadequate amount of data collected upon which an appropriate legislative rule could have been predicated. Accordingly, the agency determined it necessary to pursue an emergency legislative rule,

Unless the emergency rule is approved, it will be impossible for the sale of the new 10-year franchises to be made in time to take effect on July 1, 2000.

An objective of this Rule is to provide guidelines for the selling of the franchises for a minimum of \$19,000,000 in the state fund, general revenue which is projected by the Governor's official revenue estimates for fiscal year 2000.

In addition, this rule explains and clarifies the procedures to be used in the establishment of minimum bids for each franchise; the number and types of Class A and Class B licenses to be authorized in each market zone; bidding procedures; award of residential preferences of 5% of the bid price; award of an additional preference of 5% and methodology for selecting the successful bidders.

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). . . "time limitation" to be able to sell franchises in time to take effect on July 1, 2000.

par. 14 This decision shall be cited as Emergency Rule Decision 20-99 or ERD 20-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Alcohol Beverage Control Administration, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

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SECRETARY OF STATE

Dec 10 10 40 AM '99

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