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June 12, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: ALCOHOL BEVERAGE CONTROL COMMISSION

RULE: NEW RULE, SERIES 7, LICENSING OF EXOTIC ENTERTAINMENT FACILITIES

DATE FILED FIRST EMERGENCY AMENDMENT: JUNE 7, 2000
DATE ORIGINALLY FILED AS AN EMERGENCY RULE: MAY 1, 2000

DECISION NO. 2-00

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 "Ken Hechler".

KEN HECHLER
Secretary of State

plus all the volunteer help we can get)
JUN 12 4 47 PM '00
OFFICE OF THE SECRETARY OF STATE
FILED

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EMERGENCY RULE DECISION
(ERD 2-00)

AGENCY: ALCOHOL BEVERAGE CONTROL COMMISSION
RULE: NEW RULE, SERIES 7, LICENSING OF EXOTIC ENTERTAINMENT FACILITIES

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FILED AS AN EMERGENCY RULE: MAY 1, 2000

- par. 1 The Alcohol Beverage Control Commission (ABCC) has filed the above emergency rule and emergency amendment to 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 ABCC filed this emergency rule with supporting documents with the Secretary of State May 1, 2000 and with the LRMRC May 1, 2000 and the emergency amendment was filed with both the Secretary of State and with the LRMRC on June 7, 2000.

par. 7 It is the determination of the Secretary of State that the ABCC 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 §60-4-23(h) reads:

This section shall be effective upon passage by the Legislature in the year 2000. On or before May 1, 2000, the commissioner shall promulgate an emergency legislative rule pursuant to the provisions of §29A of this code to effectuate the provisions of this section and shall propose a legislative rule therefor, for consideration by the Legislature, prior to the last day of December, 2000.

par. 9 It is the determination of the Secretary of State that after the ABCC amended the original filing it 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 ABCC are as follows:

The Legislative Rule filed herein, as an emergency rule, had to become effective before it could complete the full legislative cycle.

This rule explains and clarifies the impact of SB 415 which was enacted on March 11, 2000 and effective from passage. The main thrust of this act is to require the ABCC to regulate and license exotic entertainment in a manner to place a prohibition of any additional exotic entertainment facilities in the state after July 1, 2000. The Act also makes the operation of unlicensed exotic entertainment facilities a criminal offense

The Legislature mandated that an emergency legislative rule be filed by the Commissioner on or before May 1, 2000 and the Commissioner has to propose a

legislative rule for consideration by the Legislature prior to December 31, 2000. Applications for an Exotic Entertainment Facility have to be submitted to the Commissioner on or before July 1, 2000 and no thereafter no such application may be received by the Commissioner.

The short time frame within the licensing procedure has to be accomplished necessitates the filing of an emergency legislative rule.

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). . . "mandated by the Legislature."

par. 14 This decision shall be cited as Emergency Rule Decision 2-00 or ERD 2-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Alcohol Beverage Control Commission, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

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SECRETARY OF STATE

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