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July 20, 2017

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Labor

RULE: 42CSR36, New Rule, Registration of Weighing and Measuring Devices Used  
by Businesses in Commercial Transactions

DATE FILED AS AN EMERGENCY RULE: June 16, 2017

DECISION NO. 4-17

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.

  
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Mac Warner  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 4-17)

- par. 1 Labor 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 Labor filed this emergency rule with supporting documents with the Secretary of State and with LRMRC June 16, 2017.
- par. 7 It is the determination of the Secretary of State that Labor 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 §47-1-8 reads:  
  
*(b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee for service persons and service agencies to be established by legislative rule. The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section during the 2017 regular session. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.*
- par. 9 It is the determination of the Secretary of State that Labor 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:

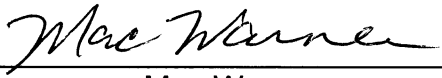
*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent 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 Labor are as follows:  
  
SB 419, passed during the 2017 regular legislative session, amends W. Va. Code §47-1-21(d), which provides for the filing of an emergency rule prior to January 1, 2018 in order to implement and administer these amendments.

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"

par. 14 This decision shall be cited as Emergency Rule Decision 4-17 or ERD 4-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with Labor.

  
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Mac Warner  
Secretary of State

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