

CHAPTER 119

ADMINISTRATIVE RULE REVIEW

SENATE BILL 01-108

BY SENATOR(S) Arnold, Matsunaka, and Perlmutter;
also REPRESENTATIVE(S) Smith, Coleman, and Grossman.

AN ACT

CONCERNING IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE ON LEGAL SERVICES IN CONNECTION WITH LEGISLATIVE REVIEW OF RULES AND REGULATIONS OF STATE AGENCIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Rules and regulations scheduled for expiration May 15, 2001 - extension - exceptions. (1) Except as indicated, the expiration of all rules and regulations of agencies in the following principal departments, which rules and regulations were adopted or amended on or after November 1, 1999, and before November 1, 2000, and that are therefore scheduled for expiration May 15, 2001, is postponed, and the provisions of section 24-4-108 or 24-34-104, Colorado Revised Statutes, shall apply:

(a) Department of agriculture; except that the following rules of the commissioner of agriculture concerning the pet animal care and facilities act (8 CCR 1201-11) are not extended:

(I) Rule 2.00 D., concerning pursuant to section 35-80-103 (2), exemptions from the licensing fees and inspection requirements of PACFA;

(II) Rule 2.00 E., concerning any person exempt from the licensing requirement voluntarily applying for a license;

(III) Rule 16.00 A. 2., concerning licensure for pet animal boarding and or training facilities;

(b) Department of corrections;

(c) Department of education; except that the following rules of the state board of

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

education concerning administration of education reform (1 CCR 301-46) are not extended:

(I) Rules 22-7-R-2.02 (2) (a) through (2) (h), concerning staff information panel;

(II) Rules 22-7-R-2.02 (3) (a) through (3) (n) and (3) (q), concerning taxpayers report panel;

(III) Rule 22-7-R-3.01, concerning college entrance exam;

(IV) Rule 22-7-R-4.04, concerning exemption from letter grades;

(d) Department of health care policy and financing; except that the following rules are not extended:

(I) The following rules of the medical services board concerning managed care open enrollment (10 CCR 2505-10):

(A) 8.207.24, concerning minimum period of client enrollment in managed care options;

(B) 8.207.31, concerning guaranteed disenrollment period;

(C) 8.207.41 K., concerning upon client request, disenroll clients from the managed care option they have enrolled in or been default assigned to;

(II) The following rule of the medical services board concerning medicaid rate setting: Rule 8.448.7 D. 1. f., concerning "Appraised Value" (10 CCR 2505-10);

(III) The following rule of the medical services board concerning the Colorado indigent care program: Rule 8.902 D. 9., concerning abortions as an excluded service (10 CCR 2505-10);

(e) Department of higher education;

(f) Department of human services; except that the following rules are not extended:

(I) The following rule of the state board of human services, concerning resource development: Rule 7.500.353, concerning the adoptive family resource registry (12 CCR 2509-6);

(II) The following rule of the state board of human services concerning child welfare services: Rule 7.306.11 B., concerning the county department making efforts to place siblings together in adoption (12 CCR 2509-4);

(III) The following rule of the state board of human services concerning child care facilities: Rule 7.701.21 C., concerning a specialized group facility (12 CCR 2509-8);

(IV) The following rule of the state board of human services concerning community-based management pilot programs: Rule 12.470, concerning expenditure

requirements (12 CCR 2512-2);

(g) Department of labor and employment; except that the following rules of the director of the division of workers' compensation (7 CCR 1101-3) are not extended:

(I) Rule III. A. 1., concerning the division designating the National Council on Compensation Insurance, Inc. as its agent;

(II) Rule III. A. 3., concerning every insurance carrier advising the division by filing with NCCI, final notice of the cancellation of insurance coverage;

(III) Rule XIV. L. 10., concerning members of the medical review panel and any person who participates directly or indirectly in an independent medical examination proceeding being immune from liability in any civil action;

(h) Department of law;

(i) Department of local affairs;

(j) Department of natural resources; except that the following rule of the state board of examiners of water well construction and pump installation contractors is not extended: Rule 7.4.3, concerning the board's acceptance of certain education and training as a substitute for a portion of the required experience (2 CCR 402-2);

(k) Department of personnel;

(l) Department of public health and environment;

(m) Department of public safety;

(n) Department of regulatory agencies; except that the following rules are not extended:

(I) The following rules of the board of dental examiners, division of registrations, concerning licensure by credentials and infection control (3 CCR 709-1):

(A) Rule IV., concerning dental licensure by credentials;

(B) Rule XXV. B., concerning generally accepted standards of infection control;

(II) The following rule of the state board of pharmacy, division of registrations, concerning professional conduct of pharmacists (3 CCR 719-1): Rule 1.00.16, concerning confidentiality;

(o) Department of revenue; except that the following rule of the motor vehicle business group is not extended: The first sentence of the rule concerning transporter license plates, concerning non-Colorado transporters engaged in interstate commerce are not eligible for Colorado transporter plates (1 CCR 204-14);

(p) Department of state;

(q) Department of transportation.

(2) The expiration of all rules and regulations of the public employees' retirement association, which rules and regulations were adopted or amended on or after November 1, 1999, and before November 1, 2000, and which are therefore scheduled for expiration May 15, 2001, is postponed.

(3) The recommendations of the committee on legal services as reflected in this act shall apply to the specified rules in the form in which said rules were considered and acted upon by the committee. Any amendments or other changes in the specified rules that became effective before November 1, 2000, that comply with the recommendations of the committee on legal services are not affected by this act. Any subsequent amendments or other changes in the specified rules that became effective on or after November 1, 2000, are not affected by this act.

SECTION 2. 24-4-103 (8) (d), Colorado Revised Statutes, is amended to read:

24-4-103. Rule-making - procedure. (8) (d) All rules adopted or amended on or after July 1, 1976, including temporary or emergency rules, shall be submitted by the adopting agency to the office of legislative legal services in the form and manner prescribed by the committee on legal services. Said rules and amendments to existing rules shall be filed by and in such office and shall be first reviewed by the staff of said committee to determine whether said rules and amendments are within the agency's rule-making authority and for later review by the committee on legal services for its opinion as to whether the rules conform with paragraph (a) of this subsection (8). THE COMMITTEE ON LEGAL SERVICES SHALL DIRECT THE STAFF OF THE COMMITTEE TO REVIEW THE RULES SUBMITTED BY ADOPTING AGENCIES USING GRADUATED LEVELS OF REVIEW BASED ON CRITERIA ESTABLISHED BY THE COMMITTEE. THE CRITERIA DEVELOPED BY THE COMMITTEE SHALL PROVIDE THAT EVERY RULE SHALL BE REVIEWED AS TO FORM AND COMPLIANCE WITH FILING PROCEDURES AND THAT, UPON REQUEST OF ANY MEMBER OF THE COMMITTEE OR ANY OTHER MEMBER OF THE GENERAL ASSEMBLY, THE STAFF SHALL PROVIDE FULL LEGAL REVIEW OF ANY RULE DURING THE TIME PERIOD THAT SUCH RULE IS SUBJECT TO REVIEW BY THE COMMITTEE. The official certificate of the director of the office of legislative legal services as to the fact of submission or the date of submission of a rule as shown by the records of his office, as well as to the fact of nonsubmission as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained therein. Records regarding the review of rules pursuant to this section shall be retained by the office of legislative legal services in accordance with policies established pursuant to section 2-3-303 (2), C.R.S. Any such rule or amendment to an existing rule issued by any agency without being so submitted within twenty days after the date of the attorney general's opinion rendered thereon to the office of legislative legal services for review by the committee on legal services shall be void. The staff's findings shall be presented to said committee at a public meeting held after timely notice to the public and affected agencies. The committee on legal services shall, on affirmative vote, submit such rules, comments, and proposed legislation at the next regular session of the general assembly. The committee on legal services shall be the committee of reference for any bill introduced pursuant to this paragraph (d). Any member of the general assembly may introduce a bill which rescinds or deletes portions of the rule. Rejection of such a bill does not constitute legislative approval of the rule. Only that

portion of any rule specifically disapproved by bill shall no longer be effective, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. Each agency shall revise its rules to conform with the action taken by the general assembly. A rule which has been allowed to expire by action of the general assembly pursuant to the provisions of paragraph (c) of this subsection (8) because such rule, in the opinion of the general assembly, is not authorized by the state constitution or statute shall not be repromulgated by an agency unless the authority to promulgate such rule has been granted to such agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists. Any rule so repromulgated shall be void. Such revision shall be transmitted to the secretary of state for publication pursuant to subsection (11) of this section. Passage of a bill repealing a rule does not result in revival of a predecessor rule. This paragraph (d) and subsection (4.5) of this section do not apply to rules of agency organization or general statements of policy which are not meant to be binding as rules. For the purpose of performing the functions assigned it by this paragraph (d), the committee on legal services, with the approval of the speaker of the house of representatives and the president of the senate, may appoint subcommittees from the membership of the general assembly.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2001