

CHAPTER 28

ADMINISTRATIVE RULE REVIEW

SENATE BILL 22-091

BY SENATOR(S) Buckner and Cooke, Gardner, Lee, Rodriguez, Moreno, Smallwood;
also REPRESENTATIVE(S) Herod and Van Winkle, Snyder, Soper, Weissman, Jodeh, Ricks.

AN ACT

CONCERNING MAKING NONSUBSTANTIVE CHANGES TO LANGUAGE IN STATUTORY PROVISIONS RELATING TO THE REVIEW OF EXECUTIVE AGENCY RULES, AND, IN CONNECTION THEREWITH, REPEALING OBSOLETE AND REDUNDANT STATUTORY PROVISIONS AND CONFORMING OTHER STATUTORY PROVISIONS TO MODERN DRAFTING PRACTICES.

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

SECTION 1. In Colorado Revised Statutes, 24-4-103, **amend** (8)(b), (8)(c)(I), (8)(d), (8.1)(b) introductory portion, (8.1)(b)(VIII), and (11)(d) as follows:

24-4-103. Rule-making - procedure - definitions - statutory citation correction. (8) (b) ~~On and after July 1, 1967, no rule may be issued nor existing rule amended by any agency~~ **AN AGENCY SHALL NOT ISSUE A RULE OR AMEND AN EXISTING RULE unless it is first submitted by the issuing agency** FIRST SUBMITS THE RULE to the attorney general for ~~his or her~~ **THE ATTORNEY GENERAL'S** opinion as to its constitutionality and legality. ~~Any~~ **IF AN AGENCY ISSUES A rule or AN amendment to an existing rule issued by any agency without being so submitted** FIRST SUBMITTING THE RULE OR AMENDMENT to the attorney general, THE RULE OR AMENDMENT is void.

(c) (I) (A) ~~Notwithstanding any other provision of law to the contrary, and the provisions of INCLUDING section 24-4-107, all rules adopted or amended on or after January 1, 1993, and before November 1, 1993, expire at 11:59 p.m. on May 15 of the year following their adoption unless the general assembly by bill acts to postpone the expiration of a specific rule, and commencing with rules adopted or amended on or~~ **AND EXCEPT AS PROVIDED IN SUBSECTION (8)(c)(I)(B) OF THIS SECTION, ON AND after November 1, 1993, all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire at 11:59 p.m. on the May 15 that follows such one-year period**

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

unless the general assembly by bill acts to postpone the expiration of a specific rule.
~~except that~~

(B) A rule adopted pursuant to section 25.5-4-402.4 (6)(b)(III) expires at 11:59 p.m. on the May 15 following the adoption of the rule unless the general assembly acts by bill to postpone the expiration of a specific rule. ~~The general assembly, in its discretion, may postpone such expiration, in which case, the provisions of section 24-4-108 or 24-34-104 apply and the rules expire or are subject to review as provided in those sections.~~

(C) ~~The postponement of POSTPONING the expiration of a rule does not constitute legislative approval of the rule and is not admissible in any court as evidence of legislative intent. The postponement of POSTPONING the expiration date of a specific rule does not prohibit any action by the general assembly pursuant to the provisions of subsection (8)(d) of this section with respect to the rule.~~

(d) (I) ~~All rules adopted or amended on or after July 1, 1976, AN AGENCY THAT HAS ADOPTED OR AMENDED A RULE SHALL SUBMIT THE ADOPTED OR AMENDED RULE, including a temporary or emergency rules, shall be submitted by the adopting agency RULE, to the office of legislative legal services in the form and manner prescribed by the committee on legal services. Said rules and amendments THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL FIRST REVIEW THE RULE OR AMENDMENT TO THE existing rules shall be filed by and in such office and shall be first reviewed by the staff of said committee RULE to determine whether said rules and amendments are THE RULE OR AMENDMENT IS 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 RULE CONFORMS with paragraph (a) of this subsection (8) SUBSECTION (8)(a) OF THIS SECTION.~~

(II) The committee on legal services shall direct the ~~staff of the committee~~ OFFICE OF LEGISLATIVE LEGAL SERVICES 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~~ ON LEGAL SERVICES MUST PROVIDE THAT THE OFFICE OF LEGISLATIVE LEGAL SERVICES REVIEW EVERY RULE 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~~ OFFICE OF LEGISLATIVE LEGAL SERVICES provide full legal review of any rule during the time period that ~~such~~ THE rule is subject to review by the committee.

(III) The official certificate of the director of the office of legislative legal services, OR THE DIRECTOR'S DESIGNEE, as to the fact ~~of submission or the date of submission of a rule~~ THAT AN AGENCY SUBMITTED A RULE TO THE OFFICE OF LEGISLATIVE LEGAL SERVICES OR AS TO THE DATE AN AGENCY SUBMITTED A RULE, as shown by the records of ~~his~~ THE DIRECTOR'S office, as well as to the fact ~~of nonsubmission~~ THAT AN AGENCY FAILED TO SUBMIT A RULE TO THE OFFICE OF LEGISLATIVE LEGAL SERVICES, 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~~ IN THE OFFICIAL CERTIFICATE. THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL RETAIN RECORDS regarding the review of rules pursuant to this section ~~shall be retained by the office of legislative legal services~~ in accordance with

polices established pursuant to section 2-3-303 (2). ~~C.R.S. Any such~~ IF AN AGENCY ISSUES A rule or AN amendment to an existing rule ~~issued by any agency~~ FOR REVIEW BY THE COMMITTEE ON LEGAL SERVICES PURSUANT TO THIS SUBSECTION (8) ~~without being so submitted~~ SUBMITTING THE RULE OR AMENDMENT TO THE OFFICE OF LEGISLATIVE LEGAL SERVICES 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~~ ON THE RULE OR AMENDMENT PURSUANT TO SUBSECTION (8)(b) OF THIS SECTION, THE RULE OR AMENDMENT IS VOID.

(IV) ~~The staff's findings shall be presented to said committee~~ OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL PRESENT ITS FINDINGS TO THE COMMITTEE ON LEGAL SERVICES 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~~ is the committee of reference for any bill introduced pursuant to this ~~paragraph (d)~~ SUBSECTION (8)(d)(IV). Any member of the general assembly may introduce a bill ~~which~~ THAT 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~~ IS no longer ~~be~~ effective, and that portion of the rule ~~which~~ THAT remains after deletion of a portion ~~thereof shall retain~~ OF THE RULE RETAINS its character as an administrative rule.

(V) Each agency shall revise its rules to conform with the action taken by the general assembly. AN AGENCY SHALL NOT REPROMULGATE a rule ~~which~~ THAT has been allowed to expire by action of the general assembly pursuant to ~~the provisions of paragraph (c) of this subsection (8)~~ SUBSECTION (8)(c) OF THIS SECTION because ~~such~~ THE 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~~ THE rule has been granted to ~~such~~ THE 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~~ IS VOID. ANY RULE THAT AN AGENCY REVISES PURSUANT TO THIS SUBSECTION (8)(d)(V) 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.

(VI) This ~~paragraph (d)~~ SUBSECTION (8)(d) and subsection (4.5) of this section do not apply to rules of agency organization or general statements of policy ~~which~~ THAT are not meant to be binding as rules.

(VII) For the purpose of performing the functions assigned it by this ~~paragraph (d)~~ SUBSECTION (8)(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.

(8.1) (b) The agency rule-making record ~~shall~~ MUST contain:

(VIII) A copy of any objection to the rule presented to the committee on legal services ~~of the general assembly by its staff~~ BY THE OFFICE OF LEGISLATIVE LEGAL

SERVICES pursuant to ~~paragraph (d) of subsection (8)~~ SUBSECTION (8)(d) of this section and the agency's response;

(11) (d) (I) ~~(Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)~~

~~(H) Each rule, adopted~~ THE AGENCY ADOPTING A RULE SHALL FILE THE ADOPTED RULE, together with the attorney general's opinion rendered in connection ~~therewith,~~ shall be filed WITH THE RULE, WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE COLORADO REGISTER pursuant to subsection (12) of this section within twenty days after adoption ~~with the secretary of state for publication in the Colorado register~~ OF THE RULE. Upon written request of an agency, the secretary of state shall correct typographical and other nonsubstantive errors appearing in the rules as filed by ~~such~~ THE agency that occur after final adoption of the rules by the agency during the preparation of ~~such~~ THE rules for publication in order to conform the published rules with the adopted rules. THE AGENCY SHALL ALSO FILE notices of rule-making proceedings pursuant to subsection (3) of this section ~~shall also be filed~~ with the secretary of state in sufficient time for publication IN THE REGISTER pursuant to subsection (5) of this section. ~~in the register.~~ AN AGENCY SHALL FILE rules revised to conform with action taken by the general assembly ~~shall be filed~~ with the secretary of state for publication in the register and in the code of Colorado regulations. The OFFICE OF LEGISLATIVE legal services ~~committee of the general assembly~~ shall notify the secretary of state whenever a rule published in the code is rescinded or a portion ~~thereof~~ OF THE RULE is deleted by the general assembly and whenever a rule or a portion ~~thereof~~ OF A RULE is allowed to expire in accordance with ~~section 24-4-108 or with subparagraph (I) of paragraph (c) of subsection (8)~~ SUBSECTION (8)(c)(I) of this section. ~~and~~ The secretary of state shall direct the removal from the code of material ~~so~~ THAT WAS deleted, rescinded, or allowed to expire.

SECTION 2. In Colorado Revised Statutes, **repeal** 24-4-108.

SECTION 3. In Colorado Revised Statutes, 11-35-101, **amend** (3) as follows:

11-35-101. Alternatives to surety bonds permitted - requirements - definition - rules. (3) All rules adopted or amended by state agencies pursuant to subsection (2) of this section are subject to ~~section 24-4-103 (8)(c) and (8)(d), C.R.S., and section 24-4-108 or 24-34-104 (6)(b), C.R.S.~~ SECTION 24-4-103.

SECTION 4. In Colorado Revised Statutes, 23-3.1-104, **amend** (3) as follows:

23-3.1-104. Duties and powers of division - rules. (3) ~~On or after July 1, 1979,~~ All rules and regulations promulgated by the division pursuant to ~~the provisions of paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) of this section ~~shall be~~ ARE subject to ~~sections 24-4-103 (8) and 24-4-108, C.R.S.~~ SECTION 24-4-103. Any guarantee made pursuant to any rule or regulation ~~shall continue~~ CONTINUES to be governed by the rule or regulation in effect at the time when the guarantee was made, whether or not ~~such~~ THE rule or regulation has been continued.

SECTION 5. In Colorado Revised Statutes, 24-90-105, **amend** (1)(a)(II) as follows:

24-90-105. Powers and duties of state librarian - rules. (1) The state librarian has the following powers and duties with respect to the state library:

(a) (II) Rules or regulations promulgated under provisions of this part 1 shall be ARE subject to sections ~~24-4-103 (8)(c) and (8)(d) and 24-4-108~~ SECTION 24-4-103.

SECTION 6. In Colorado Revised Statutes, 25-4-904, **amend** (2) as follows:

25-4-904. Rules - immunization rules - rule-making authority of state board of health. (2) All rule-making authority granted to the state board of health under ~~the provisions of this article~~ THIS ARTICLE 4 is granted on the condition that the general assembly reserves the power to delete or rescind any rule of the board. All rules promulgated pursuant to this subsection (2) shall be ARE subject to sections ~~24-4-103 (8)(c) and (8)(d) and 24-4-108, C.R.S.~~ SECTION 24-4-103.

SECTION 7. In Colorado Revised Statutes, 25-7-105, **amend** (1)(a)(IV) as follows:

25-7-105. Duties of commission - rules - legislative declaration - definitions. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate rules that are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article 7, including:

(a) (IV) Notwithstanding the provisions of section 25-7-133, the expiration of the state implementation plan for ozone maintenance and related rules of the air quality control commission, and the amendments to commission regulations ~~number~~ NUMBERS 3 and 7, which state implementation plan and rules, and amendments to regulations ~~number~~ NUMBERS 3 and 7, were adopted or amended by the commission on March 21, 1996, and which are therefore scheduled for expiration May 15, 1997, is postponed until December 31, 2005. ~~and the provisions of section 24-4-108, C.R.S., shall apply.~~

SECTION 8. In Colorado Revised Statutes, 25-7-127, **amend** (1) as follows:

25-7-127. Continuance of existing rules and orders. (1) All rules or amendments to existing rules adopted by the commission on or after June 20, 1979, ~~shall be~~ ARE subject to sections ~~24-4-103 (8)(c) and (8)(d) and 24-4-108, C.R.S.~~ SECTION 24-4-103.

SECTION 9. In Colorado Revised Statutes, 25-15-302, **amend** (5) as follows:

25-15-302. Solid and hazardous waste commission - creation - membership - rules - fees - administration - definition. (5) The rules ~~and regulations~~ promulgated by the commission shall be ARE subject to expiration in accordance with sections ~~24-4-103 (8)(c) and 24-4-108, C.R.S.~~ SECTION 24-4-103.

SECTION 10. In Colorado Revised Statutes, 33-3-104, **amend** (8) as follows:

33-3-104. When state is liable - rules. (8) All rules concerning damages by wildlife adopted or amended by the commission on or after July 1, 1979, ~~shall be~~

ARE subject to ~~sections 24-4-103 (8)(c) and (8)(d) and 24-4-108, C.R.S.~~ SECTION 24-4-103.

SECTION 11. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 17, 2022