

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/27/03*

# A Bill

HOUSE BILL 2635

5 By: Representative Mahony  
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## For An Act To Be Entitled

9 AN ACT CONCERNING THE FORM AND PUBLISHING OF  
10 STATE AGENCY RULES; TO DELETE REFERENCES TO THE  
11 WORD "REGULATION" IN THE ARKANSAS ADMINISTRATIVE  
12 PROCEDURE ACT AND INSTEAD USE THE DEFINED TERM  
13 "RULE"; AND FOR OTHER PURPOSES.  
14

## Subtitle

15 AN ACT CONCERNING THE FORM AND  
16 PUBLISHING OF STATE AGENCY RULES.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 25-15-204 is amended to read as follows:  
23 25-15-204. Rules - Procedure for adoption.

24 (a) Prior to the adoption, amendment, or repeal of any rule, the  
25 agency shall:

26 (1)(A) Give at least thirty (30) days' notice of its intended  
27 action. The thirty-day period shall begin on the first day of the  
28 publication of notice.

29 (B) The notice shall include a statement of the terms or  
30 substance of the intended action or a description of the subjects and issues  
31 involved, and the time, the place where, and the manner in which interested  
32 persons may present their views thereon.

33 (C) The notice shall be mailed to any person specified by  
34 law and to all persons who shall have requested advance notice of rule making  
35 proceedings.

36 (D)(i) Unless otherwise provided by law, the notice shall



1 be published in a newspaper of general daily circulation for ~~seven (7)~~ three  
2 (3) consecutive days and, where appropriate, in those trade, industry, or  
3 professional publications which the agency may select; ~~and.~~

4 (ii) The notice shall be published by the Secretary  
5 of State on the Internet for thirty (30) days in accordance with § 25-15-218;  
6 and

7 (2)(A) Afford all interested persons reasonable opportunity to  
8 submit written data, views, or arguments, orally or in writing.

9 (B) Opportunity for oral hearing must be granted if  
10 requested by twenty-five (25) persons, by a governmental subdivision or  
11 agency, or by an association having no fewer than twenty-five (25) members.

12 (C) The agency shall fully consider all written and oral  
13 submissions respecting the proposed rule before finalizing the language of  
14 the proposed rule and filing the proposed rule as required by subsection (d)  
15 of this section.

16 (D) Upon adoption of a rule, the agency, if requested to  
17 do so by an interested person either prior to adoption or within thirty (30)  
18 days thereafter, shall issue a concise statement of the principal reasons for  
19 and against its adoption, incorporating therein its reasons for overruling  
20 the considerations urged against its adoption.

21 (E) Where rules are required by law to be made on the  
22 record after opportunity for an agency hearing, the provisions of that law  
23 shall apply in place of this subdivision (a)(2).

24 (b) If an agency finds that imminent peril to the public health,  
25 safety, or welfare requires adoption of a rule upon less than thirty (30)  
26 days' notice and states in writing its reasons for that finding, it may  
27 proceed without prior notice or hearing, or upon any abbreviated notice and  
28 hearing that it may choose, to adopt an emergency rule. The rule may be  
29 effective for no longer than one hundred twenty (120) days.

30 (c) Every agency shall accord any person the right to petition for the  
31 issuance, amendment, or repeal of any rule. Within thirty (30) days after  
32 submission of a petition, the agency shall either deny the petition, stating  
33 in writing its reasons for the denial, or shall initiate rule making  
34 proceedings.

35 (d)(1)(i) Every agency, including those exempted under § 25-15-202,  
36 shall file with the Secretary of State, the Arkansas State Library, and the

1 Bureau of Legislative Research a copy of each rule ~~and regulation~~ adopted by  
2 it and a statement of financial impact for the rule ~~or regulation~~.

3 (ii) Rules shall be filed in compliance with this section  
4 and with §§ 25-15-218 and 10-3-309.

5 (2) The Secretary of State shall keep a register of the rules  
6 open to public inspection, and it shall be a permanent register.

7 ~~(3) Each agency shall provide its regulations to the Bureau of~~  
8 ~~Legislative Research in an electronic format acceptable to the bureau. The~~  
9 ~~bureau shall place the agency regulations in the General Assembly's Internet~~  
10 ~~Web site.~~

11 ~~(4)~~(3)(A) The scope of the financial impact statement shall be  
12 determined by the agency, but shall include, at a minimum, the estimated cost  
13 of complying with the rule and the estimated cost for the agency to implement  
14 the rule.

15 (B) If the agency has reason to believe that the  
16 development of a financial impact statement will be so speculative as to be  
17 cost prohibitive, the agency shall submit a statement and explanation to that  
18 effect.

19 (C) If the purpose of a state agency rule ~~or regulation~~ is  
20 to implement a federal rule or regulation, the financial impact statement  
21 shall be limited to any incremental additional cost of the state rule ~~or~~  
22 ~~regulation~~ as opposed to the federal rule or regulation.

23 (e)(1) Each rule adopted by an agency shall be effective ten (10) days  
24 after filing unless a later date is specified by law or in the rule itself.

25 (2)(A) However, an emergency rule may become effective  
26 immediately upon filing, or at a stated time less than ten (10) days  
27 thereafter, if the agency finds that this effective date is necessary because  
28 of imminent peril to the public health, safety, or welfare. The agency's  
29 finding and a brief statement of the reasons therefor shall be filed with the  
30 rule.

31 (B) The agency shall take appropriate measures to make  
32 emergency rules known to the persons who may be affected by them.

33 (f) No rule adopted after June 30, 1967, shall be valid unless adopted  
34 and filed in substantial compliance with this section.

35 (g) In any proceeding brought which questions the existence of  
36 imminent peril to the public health, safety, or welfare, a written finding by

1 the agency that adoption of any emergency rule was necessary to avoid the  
2 loss of federal funding or certification shall establish a prima facie case  
3 of the existence of imminent peril to the public health, safety, or welfare  
4 and the burden of proof shall shift to the challenger to rebut the existence  
5 of the condition by a preponderance of the evidence.

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7 SECTION 2. Arkansas Code § 25-15-205(e) is repealed.

8 ~~(e)(1) The Secretary of State shall publish the rules contained in~~  
9 ~~"The Arkansas Register" on its Internet Web site.~~

10 ~~(2) The Secretary of State may omit from publication on its~~  
11 ~~Internet web site any rules:~~

12 ~~(A) That are published on an agency, board, or commission~~  
13 ~~Internet Web site and are accessible at no cost to the public; or~~

14 ~~(B) In which publication would be unduly cumbersome,~~  
15 ~~expensive, or otherwise, so long as its Internet Web site indicates where and~~  
16 ~~how a copy of the omitted materials may be obtained.~~

17 ~~(3) The Secretary of State may adopt regulations implementing~~  
18 ~~the provisions of this section, including, but not limited to, requiring the~~  
19 ~~submission of rules in an acceptable electronic format.~~

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21 SECTION 3. Arkansas Code Title 25, Chapter 15 is amended to add the  
22 following new section:

23 25-15-218. Publication on the Internet - Uniform numbering system.

24 (a)(1) The Secretary of State shall publish on the Internet:

25 (A) All adopted rules of each state agency;

26 (B) A copy of each rule proposed by a state agency and the  
27 financial impact statement for each rule; and

28 (C) The notice for the adoption, amendment, or repeal of  
29 any rule required to be published on the Internet under § 25-15-204.

30 (2) The Secretary of State may publish the rules on the  
31 Secretary of State's Internet website or may contract with a provider of  
32 Internet services to publish the rules on another Internet site.

33 (3) No fee shall be charged for public access to the rules on  
34 the Internet site.

35 (b) The Secretary of State may omit from publication on its Internet  
36 Web site any rules in which publication would be unduly cumbersome,

1 expensive, or otherwise, so long as its Internet Web site indicates where and  
2 how a copy of the omitted materials may be obtained.

3 (c) Each state agency shall file it's adopted rules, proposed rules,  
4 and notices with the Secretary of State in an electronic format acceptable to  
5 the Secretary of State.

6 (d)(1) The Secretary of State shall establish a uniform numbering  
7 system for rules of state agencies.

8 (2) Beginning July 1, 2005, all rules filed with the Secretary  
9 of State shall conform with the numbering system.

10 (3) By July 1, 2005, each state agency shall:

11 (A) Revise its rules to comply with the numbering system  
12 adopted by the Secretary of State; and

13 (B) Provide the Secretary of State a complete set of the  
14 rules in an electronic format acceptable to the Secretary of State.

15 (e) The Secretary of State shall adopt rules implementing this  
16 section.

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18 /s/ Mahony  
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