

1 State of Arkansas
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4

A Bill

SENATE BILL 87

5 By: Senator J. Dotson
6 By: Representative Eubanks
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW CONCERNING THE CREATION
10 AND IMPLEMENTATION OF THE CODE OF ARKANSAS RULES; AND
11 FOR OTHER PURPOSES.
12
13

Subtitle

14 TO AMEND ARKANSAS LAW CONCERNING THE
15 CREATION AND IMPLEMENTATION OF THE CODE
16 OF ARKANSAS 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(g) is amended to read as follows:

23 (g)(1)(A) Each rule adopted by an agency is effective ten (10) days
24 after filing of the final rule with the Secretary of State unless a later
25 date is specified by law or in the rule itself.

26 (B) A final rule shall not be filed until the
27 thirty-day public comment period required under subdivision (a)(1)(A) of this
28 section has expired.

29 (C)(i) After the expiration of the thirty-day public
30 comment period and before the effective date of the rule, the agency
31 promulgating the rule shall take appropriate measures to make the final rule
32 known to the persons who may be affected by the rule.

33 (ii) Appropriate measures shall include
34 without limitation posting the following information on the agency's website:

35 (a) The final rule;

36 (b) Copies of all written comments submitted



1 to the agency regarding the rule;

2 (c) A summary of all written and oral comments
3 submitted to the agency regarding the rule and the agency's response to those
4 comments;

5 (d) A summary of the financial impact of the
6 rule; and

7 (e) The proposed effective date of the final
8 rule.

9 (2)(A)(i) However, an emergency rule may become effective
10 immediately upon filing or at a stated time less than ten (10) days after
11 filing if the agency finds that this effective date is necessary because of
12 imminent peril to the public health, safety, or welfare.

13 (ii) The agency's finding, a brief statement of the
14 reasons for the finding, and the financial impact statement shall be filed
15 with the rule.

16 (B) The agency shall take appropriate measures to make
17 emergency rules known to the persons who may be affected by the emergency
18 rules.

19 (3) To ensure that the Code of Arkansas Rules is updated when a
20 rule goes into effect, the Secretary of State shall work with the Bureau of
21 Legislative Research to implement and maintain a system that notifies the
22 Bureau of Legislative Research when a final rule is filed with the Secretary
23 of State, including without limitation notification of the date the final
24 rule:

25 (A) Was filed with the Secretary of State; and

26 (B) Will become effective.

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28 SECTION 2. Arkansas Code Title 25, Chapter 15, Subchapter 2, is
29 amended to add an additional section to read as follows:

30 25-15-221. Electronic filing system.

31 The Bureau of Legislative Research, in consultation with the Secretary
32 of State, may develop an electronic filing system to work in conjunction with
33 the Code of Arkansas Rules to facilitate the filing requirements for a rule
34 under Arkansas law, including without limitation the filing of a final rule.

35
36 SECTION 3. Arkansas Code § 25-15-218 is amended to read as follows:

1 25-15-218. Code of Arkansas Rules.

2 (a) The Bureau of Legislative Research shall:

3 (1)(A)(i) Compile, format, and index a codification of the
4 general and permanent rules of agencies to be known as the "Code of Arkansas
5 Rules".

6 (ii) The bureau shall not include in the Code of
7 Arkansas Rules an emergency rule promulgated under § 25-15-204(c).

8 (B)(i) In carrying out the codification under subdivision
9 (a)(1)(A)(i) of this section, the bureau shall have the same powers and
10 duties related to the Code of Arkansas Rules as the Arkansas Code Revision
11 Commission, Code Revisor, and bureau have related to the Arkansas Code of
12 1987 Annotated under § 1-2-303(d)(1).

13 (ii) The bureau shall not make any change in the
14 substance or meaning of any provision of a rule.

15 (C)(i) The bureau shall consult with an agency when
16 codifying a rule of that agency.

17 (ii) An agency that objects to the form of the
18 codification of a rule by the bureau may appeal the codification of the rule
19 to the:

20 (a) Legislative Council or a subcommittee of
21 the Legislative Council designated for that purpose; or

22 (b) If the General Assembly is in session, the
23 Joint Budget Committee or a subcommittee of the Joint Budget Committee
24 designated for that purpose;

25 (2)(A) Develop a uniform style, format, and numbering system for
26 the rules in the Code of Arkansas Rules.

27 (B) The uniform style, format, and numbering system
28 developed under subdivision (a)(2)(A) of this section shall conform as nearly
29 as practical to the style of the Arkansas Code of 1987 Annotated.

30 (C) Rules included in the Code of Arkansas Rules shall be
31 cited and referred to by the numbering system established under subdivision
32 (a)(2)(A) of this section;

33 (3) Communicate to agencies the uniform style, format, and
34 numbering system;

35 (4)(A) Cause the Code of Arkansas Rules to be published as an
36 online searchable database that is available for use by the general public at

1 no charge.

2 (B) The online searchable database under subdivision
3 (a)(4)(A) of this section shall:

4 (i) Constitute the official version of the Code of
5 Arkansas Rules; and

6 (ii) Be prima facie evidence of the rules contained
7 in the Code of Arkansas Rules.

8 (C) In no event shall the bureau be required to produce a
9 print version of the Code of Arkansas Rules, including without limitation in
10 response to a request under the Freedom of Information Act of 1967, § 25-19-
11 101 et seq.;

12 (5) Update the Code of Arkansas Rules at least monthly with the
13 current version of each rule adopted by an agency; and

14 (6) Indicate in bold type on the webpage of the Code of Arkansas
15 Rules the date of the latest update.

16 (b) Each agency shall draft its rules to comply with the uniform
17 style, format, and numbering system developed by the bureau under subdivision
18 (a)(2) of this section.

19 (c)(1) Except as provided in subdivision (c)(2) of this section, a
20 rule that is not included in the Code of Arkansas Rules is not enforceable by
21 the agency promulgating the rule.

22 (2)(A) The bureau may omit from publication in the Code of
23 Arkansas Rules any rule in which publication would be unduly cumbersome,
24 expensive, or otherwise impractical.

25 (B) If a rule is omitted from publication under
26 subdivision (c)(2)(A) of this section, the Code of Arkansas Rules shall
27 indicate where and how a copy of the omitted rule may be obtained.

28 (3) Unless otherwise provided by law, all rules, portions of
29 rules, and amendments to rules in effect and in the form in which they
30 existed immediately preceding the effective date of the Code of Arkansas
31 Rules are repealed upon the Code of Arkansas Rules becoming effective.

32 (d)(1) The bureau may enter into a professional services contract to
33 assist in carrying out the duties under this section.

34 (2) The bureau shall retain the copyright over the Code of
35 Arkansas Rules.

36 (e)(1) The bureau may prepare guidance documents for agencies

1 regarding matters necessary for the implementation of this section, including
2 without limitation the:

3 (A) Form and style of content that will be included in the
4 Code of Arkansas Rules; and

5 (B) Submission of information to the bureau for inclusion
6 in the Code of Arkansas Rules.

7 (2) A guidance document under subdivision (e)(1) of this section
8 is not a rule under § 25-15-202.

9 (f)(1) The bureau may make a technical correction to a rule codified
10 in the Code of Arkansas Rules:

11 (A) Pursuant to the request of an agency; or

12 (B)(i) Upon the bureau's own initiative.

13 (ii)(a) Before making a technical correction under
14 subdivision (f)(1)(B)(i) of this section, the bureau shall consult with the
15 agency that promulgated the rule for which the correction is necessary.

16 (b) An agency that objects to a technical
17 correction made by the bureau under subdivision (f)(1)(B)(i) of this section
18 may appeal the technical correction in the same manner that an agency may
19 appeal the form of a codification of a rule under subdivision (a)(1)(C)(ii)
20 of this section.

21 (2) Technical corrections under this subsection may include
22 without limitation changes to:

23 (A) A website address;

24 (B) A physical address;

25 (C) A phone number; and

26 (D) Contact information.

27 (3) When making a technical correction under this subsection,
28 the bureau shall not change the substance or meaning of a rule.

29 (g) The bureau may omit from codification in the Code of Arkansas
30 Rules provisions within a rule that, in the judgment of the bureau, are
31 inappropriate in the Code of Arkansas Rules, including without limitation:

32 (1) Effective date clauses;

33 (2) Authority clauses; and

34 (3) Severability clauses.

35 (h)(1) The classification and organization of the titles, subtitles,
36 chapters, parts, subparts, subchapters, sections, subsections, and

1 subdivisions of the Code of Arkansas Rules, and any headings thereto, are
2 made for the purpose of convenient reference and orderly arrangement, and no
3 implication, inference, or presumption of a legislative or administrative
4 construction shall be drawn from that classification or organization.

5 (2) Unless otherwise provided in Arkansas law, title, chapter,
6 subchapter, part, and subpart analyses, and the descriptive headings or
7 catchlines immediately preceding or within the text of the individual
8 sections of the Code of Arkansas Rules, except the section numbers included
9 in the headings or catchlines immediately preceding the text of the sections,
10 do not constitute part of the rule and shall in no manner limit or expand the
11 construction of any portion of the rule.

12 (3) All historical citations, annotations, and notes set out in
13 the Code of Arkansas Rules are given for the purpose of convenient reference
14 and do not constitute part of the rule.

15 (i)(1) Except as otherwise specifically provided in Arkansas law, in
16 the event any title, subtitle, chapter, part, subpart, subchapter, section,
17 subsection, subdivision, paragraph, subparagraph, item, sentence, clause,
18 phrase, or word of the Code of Arkansas Rules is declared or adjudged to be
19 invalid or unconstitutional, the declaration or adjudication shall not affect
20 the remaining portions of the Code of Arkansas Rules, which shall remain in
21 full force and effect as if the portion declared or adjudged invalid or
22 unconstitutional was not originally a part of the Code of Arkansas Rules.

23 (2) A rule is severable unless the rule specifically provides
24 that it is not severable.

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26 SECTION 4. DO NOT CODIFY. TEMPORARY LANGUAGE. (a) The General
27 Assembly finds:

28 (1) When the Code of Arkansas Rules becomes effective, it is
29 inevitable that one (1) or more rules will be in the process of amendment or
30 repeal at that time;

31 (2) It is likewise inevitable that one (1) or more proposed
32 rules seeking to create new rules will be in the promulgation process when
33 the Code of Arkansas Rules becomes effective;

34 (3) A moratorium on new rulemaking to coincide with the
35 implementation of the Code of Arkansas Rules is unduly burdensome and
36 impractical;

1 (4) Potential confusion will result if an uncodified version of
2 an existing rule in the process of being amended or repealed by a proposed
3 rule is in place at the same time a codified version of the existing rule is
4 included in the Code of Arkansas Rules; and

5 (5) To avoid this confusion, it is necessary that:

6 (A) A proposed rule seeking to adopt, amend, or repeal a
7 rule pending on the date that the Code of Arkansas Rules becomes effective
8 remain valid for a period of time; and

9 (B) An existing rule subject to amendment or repeal by a
10 proposed rule pending on the date that the Code of Arkansas Rules becomes
11 effective shall continue in effect for a period of time in lieu of being
12 incorporated in a codified format into the Code of Arkansas Rules to allow
13 for a proposed rule to become a final rule and then be subsequently codified
14 and incorporated into the Code of Arkansas Rules.

15 (b) As used in this section:

16 (1) "Existing rule" means a rule in effect:

17 (A) Under applicable Arkansas law, including without
18 limitation the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
19 and

20 (B) Before the effective date of the Code of Arkansas
21 Rules;

22 (2) "Pending" means a proposed rule has:

23 (A) Not been approved under § 10-3-309;

24 (B) Been approved under § 10-3-309 but has not yet been
25 filed as a final rule under § 25-15-204;

26 (C) If approval is not required under § 10-3-309, not yet
27 been filed as a final rule under § 25-15-204; or

28 (D) If approval is not required under § 10-3-309 and the
29 agency or other governmental entity is not subject to the Arkansas
30 Administrative Procedure Act, § 25-15-201 et seq., in regards to rulemaking,
31 not yet completed the action necessary to become a final rule; and

32 (3) "Proposed rule" means:

33 (A) An agency or other governmental entity has begun the
34 process of adoption, amendment or repeal of a rule under the Arkansas
35 Administrative Procedure Act, § 25-15-201 et seq., by publishing notice of
36 its intended action; or

1 (B) If the agency or other governmental entity is not
2 subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in
3 regards to rulemaking, the agency or other governmental entity has begun the
4 process of adoption, amendment, or repeal of a rule under other Arkansas law.

5 (c)(1) If a proposed rule is pending on the date that the Code of
6 Arkansas Rules becomes effective, the proposed rule shall remain valid for
7 one hundred eighty (180) days from the date the Code of Arkansas Rules
8 becomes effective.

9 (2) If the proposed rule under subdivision (c)(1) of this
10 section becomes a final rule within one hundred eighty (180) days of the date
11 the Code of Arkansas Rules becomes effective, the Bureau of Legislative
12 Research shall incorporate the content of the final rule into the Code of
13 Arkansas Rules on the effective date of the final rule.

14 (3) If the proposed rule does not become a final rule within one
15 hundred eighty (180) days of the date the Code of Arkansas Rules becomes
16 effective or is otherwise withdrawn by the agency or not approved under § 10-
17 3-309:

18 (A) The proposed rule is no longer valid and shall not be
19 submitted for the action necessary to become a final rule; and

20 (B) The bureau shall not incorporate the proposed rule
21 into the Code of Arkansas Rules.

22 (d)(1) If a proposed rule pending on the date that the Code of
23 Arkansas Rules becomes effective amends or repeals an existing rule, the
24 existing rule is not repealed under § 25-15-218(c)(3) and shall remain in
25 effect and in the form in which it existed immediately preceding the
26 effective date of the Code of Arkansas Rules as provided in this section.

27 (2) On its effective date, the Code of Arkansas Rules shall not
28 include a codified version of an existing rule that remains in effect under
29 subdivision (d)(1) of this section.

30 (e) If a proposed rule amending or repealing an existing rule under
31 subsection (d) of this section becomes a final rule within one hundred eighty
32 (180) days of the Code of Arkansas Rules becoming effective:

33 (1)(A) If necessary, the bureau shall incorporate a codified
34 version of the existing rule which had remained in effect under subsection
35 (d) of this section into the Code of Arkansas Rules on the effective date of
36 the final rule amending or repealing the existing rule.

1 (B) The codified version of the rule under subdivision
2 (e)(1)(A) of this section shall reflect the changes made by the final rule §
3 amending or repealing the existing rule; and

4 (2) The existing rule remaining in effect under subsection (d)
5 of this section shall be repealed on the effective date of the final rule
6 amending or repealing the existing rule.

7 (f) If a proposed rule amending or repealing an existing rule under
8 subsection (d) of this section does not become a final rule within one
9 hundred eighty (180) days of the Code of Arkansas Rules becoming effective or
10 is otherwise withdrawn by the agency or not approved under § 10-3-309:

11 (1)(A) The bureau shall incorporate a codified version of the
12 existing rule that had remained in effect under subsection (d) of this
13 section into the Code of Arkansas Rules as soon as practicable following the
14 Code of Arkansas Rules being effective for one hundred eighty (180) days or
15 the proposed rule being withdrawn or not approved under § 10-3-309, whichever
16 is earlier.

17 (B) The codified version of the rule under subdivision
18 (f)(1)(A) of this section shall not reflect the changes included in the
19 proposed rule amending or repealing the existing rule; and

20 (2) The existing rule that had remained in effect under
21 subsection (d) of this section shall be repealed upon the incorporation of
22 the codified version of the existing rule into the Code of Arkansas Rules.

23 (g) The bureau shall notify the Secretary of State when a codified
24 version of an existing rule that had remained in effect under subsection (d)
25 of this section has been incorporated into the Code of Arkansas Rules.

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29 **APPROVED: 2/17/23**
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