

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 87

By: Senator J. Dotson
By: Representative Eubanks

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE CREATION
AND IMPLEMENTATION OF THE CODE OF ARKANSAS RULES; AND
FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING THE
CREATION AND IMPLEMENTATION OF THE CODE
OF ARKANSAS RULES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 25-15-204(g) is amended to read as follows:

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

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

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

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

(a) The final rule;

(b) Copies of all written comments submitted



to the agency regarding the rule;

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

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

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

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

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

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

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

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

(B) Will become effective.

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

25-15-221. Electronic filing system.

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

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

25-15-218. Code of Arkansas Rules.

(a) The Bureau of Legislative Research shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

no charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) A website address;

(B) A physical address;

(C) A phone number; and

(D) Contact information.

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

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

(1) Effective date clauses;

(2) Authority clauses; and

(3) Severability clauses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) As used in this section:

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

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

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

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

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

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

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

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

(3) "Proposed rule" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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