

Act No. 9
Public Acts of 2024
Approved by the Governor
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2024**

Introduced by Reps. MacDonell, Wilson, Conlin, Arbit, Hood, Glanville, Steckloff, Price,
Brenda Carter, Tsernoglou, Paiz, Rheingans, Morgan and Byrnes

ENROLLED HOUSE BILL No. 4826

AN ACT to amend 1969 PA 306, entitled “An act to provide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date,” by amending sections 33, 39a, 41, 42, 43, 44, 47, and 48 (MCL 24.233, 24.239a, 24.241, 24.242, 24.243, 24.244, 24.247, and 24.248), as amended by 2018 PA 267; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 33. (1) An agency shall promulgate rules describing its organization and stating the general course and method of its operations. The agency may include in the rules forms with instructions. Sections 41, 42, 45, and 45a do not apply to promulgation of the rules.

(2) An agency shall promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests.

(3) An agency may promulgate rules prescribing procedures for contested cases. The rules must be consistent with this act and other applicable statutes.

Sec. 39a. (1) An agency may publish the notice of hearing under section 42 only if the office has received draft proposed rules and has given the agency approval to proceed with a public hearing.

(2) After a grant of approval to hold a public hearing by the office under subsection (1), the office shall immediately provide a copy of the proposed rules to the committee. The committee shall provide a copy of the proposed rules, not later than the next business day after receipt of the notice from the office, to members of the committee and members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

Sec. 41. (1) Except as provided in section 44, before the adoption of a rule, an agency, or the office, shall give notice of a public hearing and offer a person an opportunity to present data, views, questions, and arguments. The notice must be given within the time prescribed by any applicable statute, or if none, in the manner prescribed in section 42(1).

(2) The notice described in subsection (1) must include all of the following:

(a) A reference to the statutory authority under which the action is proposed.

(b) The time and place of the public hearing and a statement of the manner in which data, views, questions, and arguments may be submitted by a person to the agency at other times.

(c) A statement of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date of the rule.

(3) The agency, or the office acting on behalf of an agency, shall transmit copies of the notice described in subsection (1) to each person that requested the agency in writing or electronically for advance notice of proposed action that may affect the person. If requested, the notice must be by mail, in writing, or electronically to the last address specified by the person.

(4) The public hearing must comply with any applicable statute, but is not subject to the provisions governing a contested case.

(5) The head of the promulgating agency or 1 or more persons designated by the head of the agency who have knowledge of the subject matter of the proposed rule shall be present at the public hearing and participate in the discussion of the proposed rule.

Sec. 42. (1) Except as provided in section 44, at a minimum, an agency, or the office acting on behalf of the agency, shall publish the notice of public hearing as prescribed in any applicable statute or, if none, the agency, or the office acting on behalf of the agency, shall publish the notice not less than 10 days and not more than 60 days before the date of the public hearing in not less than 3 newspapers of general circulation in different parts of this state, 1 of which must be in the Upper Peninsula.

(2) Additional methods that may be employed to provide notice of the public hearing include publication in trade, industry, governmental, or professional publications or posting on the website of the agency or the office.

(3) In addition to the requirements of subsection (1), the agency shall electronically submit a copy of the notice of public hearing to the office for publication in the Michigan Register. If the office submitted the notice of public hearing on behalf of the agency, the office shall publish the notice of public hearing in the Michigan Register. An agency's notice must be published in the Michigan Register before the public hearing and the agency shall electronically file a copy of the notice of public hearing with the office. Within 7 days after receipt of the notice of public hearing and before the public hearing, the office shall do all of the following:

(a) Electronically transmit a copy of the notice of public hearing to the committee.

(b) Provide notice electronically through publicly accessible internet media.

(4) After the office electronically transmits a copy of the notice of public hearing to the committee, the committee shall electronically transmit copies of the notice of public hearing, not later than the next business day after receipt of the notice from the office, to each member of the committee and the members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

(5) After receipt of the notice of public hearing filed under subsection (3), the committee may meet to consider the proposed rule, take testimony, and provide the agency with the committee's informal response to the rule.

Sec. 43. (1) Except for an emergency rule promulgated in the manner described in section 48, a rule is not valid unless it is processed in compliance with section 42, and in substantial compliance with section 41(2), (3), (4), and (5).

(2) A proceeding to contest a rule on the ground of noncompliance with the requirements of sections 41 and 42 must be commenced within 2 years after the effective date of the rule.

Sec. 44. (1) Sections 41 and 42 do not apply to an amendment or rescission of a rule that is obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose, if a statement to that effect is included in the legislative service bureau certificate of approval of the rule.

(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596. However, notice of the proposed rule must be published in the Michigan Register not less than 35 days before the rule is filed with the secretary of state under section 46(1). A reasonable period, not to exceed 21 days, must be provided for the submission of written or electronic comments and views following publication in the Michigan Register.

(3) Sections 41 and 42 do not apply to a change to a proposed rule by an agency during processing of the rule if the office determines under section 45c(3) that the regulatory impact and impact on small businesses of the changed proposed rule are not more burdensome than the regulatory impact and impact on small businesses of the original proposed rule.

(4) For purposes of subsection (2), “substantially similar” means identical, with the exception of style or format differences needed to conform to this or other state laws, as determined by the office.

Sec. 47. (1) Except for a rule processed under section 48, a rule becomes effective on the date fixed in the rule, which must not be earlier than 7 days after the date of promulgation, or, if a date is not fixed in the rule, 7 days after the date of promulgation.

(2) Except for a rule processed under section 48, an agency may withdraw a promulgated rule that has not become effective by filing a written request stating reasons for withdrawal to the secretary of state on or before the last day for filing rules for the interim period in which the rules were first filed, or by filing a written request for withdrawal to the secretary of state and the office, within a reasonable time, as determined by the office, after the last day for filing and before publication of the rule in the next supplement to the code. In any other circumstances, an agency may abrogate its rule only by rescission. If an agency has withdrawn a promulgated rule, it shall give notice, stating reasons, to the committee that the rule has been withdrawn.

(3) Sections 45 and 45a apply to rules for which a public hearing has not been held by April 1, 2000.

Sec. 48. (1) If an agency finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule the agency’s reasons for that finding, and the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies must be attached the certificates prescribed by section 45 and the governor’s certificate concurring in the finding of emergency. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or 6 months after the date of its filing, whichever is earlier. The rule may be extended once for not more than 6 months by the filing of a governor’s certificate of the need for the extension with the office of the secretary of state before expiration of the emergency rule.

(2) If the director of the department of health and human services determines that an imminent danger to the health or lives of individuals in this state can be prevented or controlled by scheduling a substance as a controlled substance under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251, and the administrator determines that the substance should be scheduled or rescheduled as a controlled substance, the department of licensing and regulatory affairs may dispense with all or part of the procedures required by sections 41 and 42 and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies must be attached the certificate of approval and the director of the department of health and human services’s notification under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251. The office shall submit the emergency rule draft language to the legislative service bureau for its formal certification within 7 business days after receipt from the department of licensing and regulatory affairs. The legislative service bureau shall issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement within 7 business days after receiving the submission and return the rule to the office. If the legislative service bureau fails to issue a certificate of approval within 7 business days after receipt of the submission for formal certification, the office may issue a certificate of approval. If the legislative service bureau returns the submission to the office before the expiration of the 7-business-day time period, the 7-business-day time period is tolled until the rule is returned by the office. The legislative service bureau has the remainder of the 7-business-day time period to consider the formal certification of the rule. On receipt from the legislative service bureau, the office shall, within 7 business days, approve the proposed rule if it considers the proposed rule to be legal and appropriate. An emergency rule adopted under this subsection remains in effect until the earlier date of the following:

(a) An identical or similar rule is promulgated.

(b) An identical or similar bill is enacted into law.

(c) The administrator determines that the emergency rule is no longer necessary.

(d) Six months after the date of its filing, which may be extended for not more than 6 months by the administrator on filing a certificate of extension with the office of the secretary of state before the expiration of 6 months after the date of its filing.

(3) An emergency rule must not be numbered and must not be compiled in the Michigan Administrative Code, but must be noted in the annual supplement to the code. The emergency rule must be published in the Michigan Register under section 8.

(4) If the agency desires to promulgate an identical or similar rule with an effectiveness beyond the final effective date of an emergency rule, the agency shall comply with the procedures prescribed by this act for the processing of a rule that is not an emergency rule. The rule must be published in the Michigan Register and the code.

(5) As used in this section, "administrator" means that term as defined in section 7103 of the public health code, 1978 PA 368, MCL 333.7103.

Enacting section 1. Sections 65 and 66 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.265 and 24.266, are repealed 90 days after the effective date of this amendatory act.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor