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SENATE BILL DRS35226-BH-2

Short Title: Various Administrative Law Changes.-AB (Public)

Sponsors: Senators Galey and Sanderson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE PROCESS FOR LEGISLATIVE REVIEW OF RULES, TO DESIGNATE THE NORTH CAROLINA ADMINISTRATIVE CODE PUBLISHED ONLINE AS THE OFFICIAL VERSION AND REMOVE THE REQUIREMENT TO PUBLISH AND PROVIDE PRINTED COPIES, TO CLARIFY THAT CONSULTATION WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS FOR TEMPORARY AND EMERGENCY RULES THAT ESTABLISH OR INCREASE A FEE IS NOT REQUIRED, TO UPDATE THE MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES, AND TO MAKE CLARIFYING CHANGES TO THE OCCUPATIONAL LICENSING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.3 reads as rewritten:

"§ 150B-21.3. Effective date of rules.

(a) Temporary and Emergency Rules. – A temporary rule or an emergency rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. – A permanent rule approved by the Commission becomes effective on the first day of the month following the month the rule is approved by the Commission, unless the Commission received written objections to the rule in accordance with subsection (b2) of this section, or unless subsection (b) of G.S. 150B-21.3B or the agency that adopted the rule specifies a later effective date.

~~(b1) Delayed Effective Dates. — Except as provided in G.S. 14-4.1, if the Commission received written objections to the rule in accordance with subsection (b2) of this section, the rule becomes effective on the earlier of the thirty first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill enacted into law before it becomes effective does not become effective.~~

~~A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved.~~



1 Notwithstanding any rule of either house of the General Assembly, any member of the General
2 Assembly may introduce a bill during the first 30 legislative days of any regular session to
3 disapprove a rule that has been approved by the Commission and that either has not become
4 effective or has become effective by executive order under subsection (c) of this section.

5 (b2) Objection.—Any person who objects to the adoption of a permanent rule may submit
6 written comments to the agency. If the objection is not resolved prior to adoption of the rule, a
7 person may submit written objections to the Commission. If the Commission receives written
8 objections from 10 or more persons, no later than 5:00 P.M. of the day following the day the
9 Commission approves the rule, clearly requesting review by the legislature in accordance with
10 instructions posted on the agency's Web site pursuant to G.S. 150B-19.1(c)(4), and the
11 Commission approves the rule, the rule will become effective as provided in subsection (b1) of
12 this section. The Commission shall notify the agency that the rule is subject to legislative
13 disapproval on the day following the day it receives 10 or more written objections. When the
14 requirements of this subsection have been met and a rule is subject to legislative disapproval, the
15 agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in
16 G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North
17 Carolina Register. If the Commission receives objections from 10 or more persons clearly
18 requesting review by the legislature, and the rule objected to is one of a group of related rules
19 adopted by the agency at the same time, the agency that adopted the rule may cause any of the
20 other rules in the group to become effective as provided in subsection (b1) of this section by
21 submitting a written statement to that effect to the Commission before the other rules become
22 effective.

23 (c) Executive Order Exception.—The Governor may, by executive order, make effective
24 a permanent rule that has been approved by the Commission but the effective date of which has
25 been delayed in accordance with subsection (b1) of this section upon finding that it is necessary
26 that the rule become effective in order to protect public health, safety, or welfare. A rule made
27 effective by executive order becomes effective on the date the order is issued or at a later date
28 specified in the order. When the Codifier of Rules enters in the North Carolina Administrative
29 Code a rule made effective by executive order, the entry must reflect this action.

30 A rule that is made effective by executive order remains in effect unless it is specifically
31 disapproved by the General Assembly in a bill enacted into law on or before the day of
32 adjournment of the regular session of the General Assembly that begins at least 25 days after the
33 date the executive order is issued. A rule that is made effective by executive order and that is
34 specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill.
35 If a rule that is made effective by executive order is not specifically disapproved by a bill enacted
36 into law within the time set by this subsection, the Codifier of Rules must note this in the North
37 Carolina Administrative Code.

38 (c1) Fees. – Notwithstanding any other provision of this section, a permanent rule that
39 establishes a new fee or increases an existing fee shall not become effective until the agency has
40 complied with the requirements of G.S. 12-3.1.

41 (d) Legislative Day and Day of Adjournment.—As used in this section:

42 (1) A "legislative day" is a day on which either house of the General Assembly
43 convenes in regular session.

44 (2) The "day of adjournment" of a regular session held in an odd-numbered year
45 is the day the General Assembly adjourns by joint resolution or by operation
46 of law for more than 30 days.

47 (3) The "day of adjournment" of a regular session held in an even-numbered year
48 is the day the General Assembly adjourns sine die.

49 (e) OSHA Standard. – A permanent rule concerning an occupational safety and health
50 standard that is adopted by the Occupational Safety and Health Division of the Department of
51 Labor and is identical to a federal regulation promulgated by the Secretary of the United States

1 Department of Labor becomes effective on the date the Division delivers the rule to the Codifier
2 of Rules, unless the Division specifies a later effective date. If the Division specifies a later
3 effective date, the rule becomes effective on that date.

4 (f) Technical Change. – A permanent rule for which no notice or hearing is required
5 under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first
6 day of the month following the month the rule is approved by the Rules Review
7 ~~Commission~~. Commission or Codifier of Rules, as applicable."

8 **SECTION 2.** Article 2A of Chapter 150B of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 150B-21.3B. Legislative review of rules.**

11 (a) Definitions. – As used in this section, "legislative day" means a day on which either
12 house of the General Assembly convenes in regular session.

13 (b) Objection to Rule. – Any person who objects to the adoption of a permanent rule may
14 submit written comments to the agency. If the objection is not resolved prior to adoption of the
15 rule, a person may submit written objections to the Commission requesting review of the rule by
16 the General Assembly. The written objections must clearly request review by the General
17 Assembly in accordance with instructions posted on the agency's website pursuant to
18 G.S. 150B-19.1(c)(4). If the Commission receives such written objections from 10 or more
19 persons no later than 5:00 P.M. of the day following the day the Commission approves the rule,
20 the rule will become effective as provided in subsection (e) of this section. The Commission shall
21 notify the agency that the rule is subject to review by the General Assembly on the day following
22 the day it receives 10 or more written objections.

23 (c) Agency Action. – If a rule is subject to review by the General Assembly pursuant to
24 this section, the agency may adopt the rule as a temporary rule if the rule would have met the
25 criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was
26 published in the North Carolina Register. If a rule that is subject to review by the General
27 Assembly is one of a group of related rules adopted by the agency at the same time, the agency
28 may cause any of the other rules in the group to become effective as provided in subsection (e)
29 of this section by submitting a written statement to that effect to the Commission before the other
30 rules become effective.

31 (d) Disapproval Bills. – Notwithstanding any rule of either house of the General
32 Assembly, any member of the General Assembly may introduce a bill during the first 30
33 legislative days of the regular session of any given calendar year to specifically disapprove a rule
34 that is subject to review by the General Assembly pursuant to subsection (b) of this section, which
35 has been approved by the Commission and that has not become effective or has become effective
36 by executive order under subsection (f) of this section. A bill specifically disapproves a rule if it
37 contains a provision that refers to the rule by the appropriate North Carolina Administrative Code
38 citation and states that the rule is disapproved.

39 (e) Delayed Effective Dates. – A rule that is subject to review by the General Assembly
40 pursuant to this section shall become effective as provided in this subsection. A rule that is
41 approved by the Commission on or before December 31 of a given calendar year becomes
42 effective on the thirty-first legislative day of the regular session of the following calendar year
43 unless a bill that specifically disapproves the rule is introduced in either house of the General
44 Assembly before the thirty-first legislative day of that session. If a bill that specifically
45 disapproves the rule is introduced in either house of the General Assembly before the thirty-first
46 legislative day of that session, the rule becomes effective August 1 of the calendar year following
47 the calendar year the Commission approved the rule. If the agency adopting the rule specifies a
48 later effective date than the date that would otherwise apply under this subsection, the later date
49 applies. A permanent rule that is not approved by the Commission or that is specifically
50 disapproved by a bill enacted into law before it becomes effective does not become effective.

1 (f) Executive Order Exception. – The Governor may, by executive order, make effective
2 a permanent rule that has been approved by the Commission but the effective date of which has
3 been delayed in accordance with subsection (e) of this section upon finding that it is necessary
4 that the rule become effective in order to protect public health, safety, or welfare. A rule made
5 effective by executive order becomes effective on the date the order is issued or at a later date
6 specified in the order. When the Codifier of Rules enters in the North Carolina Administrative
7 Code a rule made effective by executive order, the entry must reflect this action. A rule that is
8 made effective by executive order remains in effect unless it is specifically disapproved by the
9 General Assembly in a bill enacted into law before August 1 of the calendar year following the
10 calendar year the executive order is issued. A rule that is made effective by executive order and
11 that is specifically disapproved by a bill enacted into law is repealed as of the date specified in
12 the bill. If a rule that is made effective by executive order is not specifically disapproved by a
13 bill enacted into law within the time set by this subsection, the Codifier of Rules must note this
14 in the North Carolina Administrative Code."

15 **SECTION 3.** G.S. 150B-21.18 reads as rewritten:

16 "**§ 150B-21.18. North Carolina Administrative Code.**

17 The Codifier of Rules must compile all rules into a Code known as the North Carolina
18 Administrative Code. The format and indexing of the Code must conform as nearly as practical
19 to the format and indexing of the North Carolina General Statutes. The Codifier must publish
20 printed copies of the Code electronically on the website of the Office of Administrative Hearings
21 and may publish the Code in other forms. The electronic version of the Code published on the
22 website of the Office of Administrative Hearings shall be considered the official publication of
23 the North Carolina Administrative Code. The Codifier may authorize and license the private
24 indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep
25 superseded rules."

26 **SECTION 4.** G.S. 150B-21.25 is repealed.

27 **SECTION 5.** G.S. 12-3.1(c) reads as rewritten:

28 "(c) Exceptions. – This section does not apply to any of the following:

- 29 (1) Rules ~~establishing fees or charges~~ that establish a new fee or increase an
30 existing fee or charge to State, federal or local governmental units.
31 (1a) Temporary and emergency rules that establish a new fee or increase an
32 existing fee.
33 (2) A reasonable fee or charge for copying, transcripts of public hearings, State
34 publications, or mailing a document or other item.
35 (3) Reasonable registration fees covering the cost of a conference or workshop.
36 (4) Reasonable user fees covering the cost of providing data processing services."

37 **SECTION 6.** G.S. 7A-754 reads as rewritten:

38 "**§ 7A-754. Qualifications; standards of conduct; removal.**

39 Only persons duly authorized to practice law in the General Court of Justice shall be eligible
40 for appointment as the Director and chief administrative law judge or as an administrative law
41 judge in the Office of Administrative Hearings. The Chief Administrative Law Judge and the
42 administrative law judges shall comply with the ~~Model Code of Judicial Conduct for State~~
43 ~~Administrative Law Judges, as adopted by the National Conference of Administrative Law~~
44 ~~Judges, Judicial Division, American Bar Association, (revised August 1998), American Bar~~
45 Association Model Code of Judicial Conduct for State Administrative Law Judges dated August
46 2018, as amended from time to time, except that the provisions of this section shall control as to
47 the private practice of law in lieu of Rule 3.10 of Canon 4G-3, and G.S. 126-13 shall control as
48 to political activity in lieu of Canon 5-4. Failure to comply with the applicable provisions of the
49 Model Code may constitute just cause for disciplinary action under Chapter 126 of the General
50 Statutes and grounds for removal from office. Neither the chief administrative law judge nor any
51 administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1

1 while in office; violation of this provision shall constitute just cause for disciplinary action under
2 Chapter 126 of the General Statutes and shall be grounds for removal from office. Each
3 administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An
4 administrative law judge may be removed from office by the Director of the Office of
5 Administrative Hearings for just cause, as that term is used in G.S. 126-35 and this section."

6 **SECTION 7.** G.S. 93B-8.1(a)(1) reads as rewritten:

7 "(1) Applicant. – A person who makes application for licensure from an
8 occupational licensing ~~board~~ board or a State agency licensing board."

9 **SECTION 8.** Sections 1, 2, 3, and 4 of this act become effective January 1, 2022.

10 The remainder of this act is effective when it becomes law.