

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 295
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10100-BH-1

Short Title: DSS Review of Procedures/OAH. (Public)

Sponsors: Representative Stevens.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SOCIAL SERVICES COMMISSION OF THE DIVISION OF SOCIAL SERVICES TO REVIEW POLICIES, GUIDELINES, AND OTHER INTERPRETIVE STATEMENTS AND SUBMIT A REPORT TO THE OFFICE OF ADMINISTRATIVE HEARINGS AND TO UPDATE THE PROCESS FOR LEGISLATIVE REVIEW OF RULES.

The General Assembly of North Carolina enacts:

SECTION 1. No later than May 31, 2022, the North Carolina Division of Social Services (Division), by and through the Division's Social Services Commission (Commission), shall prepare and submit for review to the Office of Administrative Hearings (OAH) a comprehensive report of all its policies, guidelines, and other interpretive statements. This includes all policies, guidelines, and other interpretive statements that the Division or any of its subdivisions has sought to implement or enforce that may directly or substantially affect the procedural or substantive rights or duties of persons not employed by the Division or any of its subdivisions. The report shall include an explanation for any policies, guidelines, and other interpretive statements not adopted as a rule the Commission believes are not in violation of G.S. 150B-18. The report shall not include any emergency, temporary, or permanent rules adopted by the Division in accordance with Article 2A of Chapter 150B of the General Statutes.

SECTION 2. Upon submission of its report to the OAH, the Commission shall jointly review the report with the OAH to identify any policies, guidelines, and other interpretive statements that are in violation of G.S. 150B-18. If there is disagreement between the Commission and the OAH regarding any policies, guidelines, or other interpretive statements identified in the report as being in violation of G.S. 150B-18, then the OAH shall refer the policy, guideline, or other interpretive statement in disagreement to the Rules Review Commission (RRC). Upon referral from the OAH, the RRC shall review the policy, guideline, or other interpretive statement in disagreement and make a determination as to whether it is in violation of G.S. 150B-18. If the Commission disagrees with a determination by the RRC as to whether any policy, guideline, or other interpretive statement is in violation of G.S. 150B-18, the Commission may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

SECTION 3. To ensure that administration of the Division shall continue without interruption, any policies, guidelines, or other interpretive statements identified through joint review by the Commission and the OAH, or determined by the RRC in Section 2 as being in violation of G.S. 150B-18, shall be deemed interim rules so long as they do not conflict with any provisions of the General Statutes. Any interim rule authorized by this section shall become void July 1, 2023, if the Commission has failed to adopt that interim rule as a permanent rule by that



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1 date in accordance with Article 2A of Chapter 150B of the General Statutes. A reviewing court
2 may extend the interim rule period pending the outcome of its review, if the Commission has
3 filed an action for declaratory judgment under Section 2. Any policy, guideline, or other
4 interpretive statement issued by the Division after this act becomes effective shall become void
5 one year after it is issued; however, prior to that deadline, the Secretary of Health and Human
6 Services may reissue the policy, guideline, or other interpretive statement for an additional period
7 of one year. No policy, guideline, or other interpretative statement may be reissued more than
8 once by the Secretary of Health and Human Services under this section.

9 **SECTION 4.** G.S. 93B-8.1(a)(1) reads as rewritten:

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

12 **SECTION 5.** G.S. 150B-21.3 reads as rewritten:

13 **"§ 150B-21.3. Effective date of rules.**

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

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

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

35 ~~A bill specifically disapproves a rule if it contains a provision that refers to the rule by~~
36 ~~appropriate North Carolina Administrative Code citation and states that the rule is disapproved.~~
37 ~~Notwithstanding any rule of either house of the General Assembly, any member of the General~~
38 ~~Assembly may introduce a bill during the first 30 legislative days of any regular session to~~
39 ~~disapprove a rule that has been approved by the Commission and that either has not become~~
40 ~~effective or has become effective by executive order under subsection (c) of this section.~~

41 ~~(b2) Objection. — Any person who objects to the adoption of a permanent rule may submit~~
42 ~~written comments to the agency. If the objection is not resolved prior to adoption of the rule, a~~
43 ~~person may submit written objections to the Commission. If the Commission receives written~~
44 ~~objections from 10 or more persons, no later than 5:00 P.M. of the day following the day the~~
45 ~~Commission approves the rule, clearly requesting review by the legislature in accordance with~~
46 ~~instructions posted on the agency's Web site pursuant to G.S. 150B-19.1(c)(4), and the~~
47 ~~Commission approves the rule, the rule will become effective as provided in subsection (b1) of~~
48 ~~this section. The Commission shall notify the agency that the rule is subject to legislative~~
49 ~~disapproval on the day following the day it receives 10 or more written objections. When the~~
50 ~~requirements of this subsection have been met and a rule is subject to legislative disapproval, the~~
51 ~~agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in~~

1 G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North
2 Carolina Register. If the Commission receives objections from 10 or more persons clearly
3 requesting review by the legislature, and the rule objected to is one of a group of related rules
4 adopted by the agency at the same time, the agency that adopted the rule may cause any of the
5 other rules in the group to become effective as provided in subsection (b1) of this section by
6 submitting a written statement to that effect to the Commission before the other rules become
7 effective.

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

15 A rule that is made effective by executive order remains in effect unless it is specifically
16 disapproved by the General Assembly in a bill enacted into law on or before the day of
17 adjournment of the regular session of the General Assembly that begins at least 25 days after the
18 date the executive order is issued. A rule that is made effective by executive order and that is
19 specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill.
20 If a rule that is made effective by executive order is not specifically disapproved by a bill enacted
21 into law within the time set by this subsection, the Codifier of Rules must note this in the North
22 Carolina Administrative Code.

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

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

- 27 (1) A "legislative day" is a day on which either house of the General Assembly
28 convenes in regular session.
29 (2) The "day of adjournment" of a regular session held in an odd-numbered year
30 is the day the General Assembly adjourns by joint resolution or by operation
31 of law for more than 30 days.
32 (3) The "day of adjournment" of a regular session held in an even-numbered year
33 is the day the General Assembly adjourns sine die.

34 (e) OSHA Standard. — A permanent rule concerning an occupational safety and health
35 standard that is adopted by the Occupational Safety and Health Division of the Department of
36 Labor and is identical to a federal regulation promulgated by the Secretary of the United States
37 Department of Labor becomes effective on the date the Division delivers the rule to the Codifier
38 of Rules, unless the Division specifies a later effective date. If the Division specifies a later
39 effective date, the rule becomes effective on that date.

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

44 **SECTION 6.** Article 2A of Chapter 150B of the General Statutes is amended by
45 adding a new section to read:

46 "**§ 150B-21.3B. Legislative review of rules.**

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

49 (b) Objection to Rule. — Any person who objects to the adoption of a permanent rule may
50 submit written comments to the agency. If the objection is not resolved prior to adoption of the
51 rule, a person may submit written objections to the Commission requesting review of the rule by

1 the General Assembly. The written objections must clearly request review by the General
2 Assembly in accordance with instructions posted on the agency's website pursuant to
3 G.S. 150B-19.1(c)(4). If the Commission receives such written objections from 10 or more
4 persons no later than 5:00 P.M. of the day following the day the Commission approves the rule,
5 the rule will become effective as provided in subsection (e) of this section. The Commission shall
6 notify the agency that the rule is subject to review by the General Assembly on the day following
7 the day it receives 10 or more written objections.

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

16 (d) Disapproval Bills. – Notwithstanding any rule of either house of the General
17 Assembly, any member of the General Assembly may introduce a bill during the first 30
18 legislative days of the regular session of any given calendar year to specifically disapprove a rule
19 that has been approved by the Commission and that has not become effective or has become
20 effective by executive order under subsection (f) of this section. A bill specifically disapproves
21 a rule if it contains a provision that refers to the rule by the appropriate North Carolina
22 Administrative Code citation and states that the rule is disapproved.

23 (e) Delayed Effective Dates. – A rule that is subject to review by the General Assembly
24 pursuant to this section shall become effective as provided in this subsection. A rule that is
25 approved by the Commission on or before December 31 of a given calendar year becomes
26 effective on the thirty-first legislative day of the regular session of the following calendar year
27 unless a bill that specifically disapproves the rule is introduced in either house of the General
28 Assembly before the thirty-first legislative day of that session. If a bill that specifically
29 disapproves the rule is introduced in either house of the General Assembly before the thirty-first
30 legislative day of that session, the rule becomes effective August 1 of the calendar year following
31 the calendar year the Commission approved the rule. If the agency adopting the rule specifies a
32 later effective date than the date that would otherwise apply under this subsection, the later date
33 applies. A permanent rule that is not approved by the Commission or that is specifically
34 disapproved by a bill enacted into law before it becomes effective does not become effective.

35 (f) Executive Order Exception. – The Governor may, by executive order, make effective
36 a permanent rule that has been approved by the Commission but the effective date of which has
37 been delayed in accordance with subsection (e) of this section upon finding that it is necessary
38 that the rule become effective in order to protect public health, safety, or welfare. A rule made
39 effective by executive order becomes effective on the date the order is issued or at a later date
40 specified in the order. When the Codifier of Rules enters in the North Carolina Administrative
41 Code a rule made effective by executive order, the entry must reflect this action. A rule that is
42 made effective by executive order remains in effect unless it is specifically disapproved by the
43 General Assembly in a bill enacted into law before August 1 of the calendar year following the
44 calendar year the executive order is issued. A rule that is made effective by executive order and
45 that is specifically disapproved by a bill enacted into law is repealed as of the date specified in
46 the bill. If a rule that is made effective by executive order is not specifically disapproved by a
47 bill enacted into law within the time set by this subsection, the Codifier of Rules must note this
48 in the North Carolina Administrative Code."

49 **SECTION 7.** Sections 5 and 6 of this act become effective January 1, 2022. The
50 remainder of this act is effective when it becomes law.