

Act No. 489
Public Acts of 1996
Approved by the Governor
December 23, 1996
Filed with the Secretary of State
December 27, 1996

STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996

Introduced by Reps. Randall and McNutt

ENROLLED HOUSE BILL No. 6207

AN ACT to amend sections 7 and 115 of Act No. 306 of the Public Acts of 1969, entitled as amended "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 the Michigan register; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; 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," section 7 as amended by Act No. 224 of the Public Acts of 1995 and section 115 as amended by Act No. 222 of the Public Acts of 1996, being sections 24.207 and 24.315 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 7 and 115 of Act No. 306 of the Public Acts of 1969, section 7 as amended by Act No. 224 of the Public Acts of 1995 and section 115 as amended by Act No. 222 of the Public Acts of 1996, being sections 24.207 and 24.315 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 7. "Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. Rule does not include any of the following:

- (a) A resolution or order of the state administrative board.
- (b) A formal opinion of the attorney general.
- (c) A rule or order establishing or fixing rates or tariffs.

(d) A rule or order pertaining to game and fish and promulgated under part 411 (protection and preservation of fish, game, and birds) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.41101 to 324.41105 of the Michigan Compiled Laws, part 487 (sport fishing) of Act No. 451 of the Public Acts of 1994, being sections 324.48701 to 324.48740 of the Michigan Compiled Laws, and part 401 (wildlife conservation) of Act No. 451 of the Public Acts of 1994, being sections 324.40101 to 324.40119 of the Michigan Compiled Laws.

(e) A rule relating to the use of streets or highways, the substance of which is indicated to the public by means of signs or signals.

(f) A determination, decision, or order in a contested case.

(g) An intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public.

(h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.

(i) A declaratory ruling or other disposition of a particular matter as applied to a specific set of facts involved.

(j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.

(k) Unless another statute requires a rule to be promulgated under this act, a rule or policy that only concerns the inmates of a state correctional facility and does not directly affect other members of the public, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. As used in this subdivision, "state correctional facility" means a facility or institution that houses an inmate population under the jurisdiction of the department of corrections.

(l) All of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws:

(i) The designation, deletion, or revision of covered medical equipment and covered clinical services.

(ii) Certificate of need review standards.

(iii) Data reporting requirements and criteria for determining health facility viability.

(iv) Standards used by the department of public health in designating a regional certificate of need review agency.

(v) The modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of Act No. 368 of the Public Acts of 1978, being section 333.22210 of the Michigan Compiled Laws.

(m) A policy developed by the family independence agency under section 6(3) of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, setting income and asset limits, types of income and assets to be considered for eligibility, and payment standards for administration of assistance programs under that act.

(n) A policy developed by the family independence agency under section 6(4) of Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds.

(o) Until the expiration of 12 months after the effective date of this subdivision, a regulation issued by the family independence agency under section 6(2) of Act No. 280 of the Public Acts of 1939 setting standards and policies for the administration of programs under that act. Upon the expiration of 12 months after the effective date of this subdivision, regulations described in this subdivision are not binding and effective unless processed as emergency rules under section 48 or promulgated in accordance with this act. This subdivision does not apply to policies permanently exempted under subdivisions (m) and (n).

(p) Beginning on the effective date of the amendatory act that added this subdivision and until 3 years after that date, the provisions of an agency's contract with a public or private entity including, but not limited to, the provisions of an agency's standard form contract.

Sec. 115. (1) Chapters 4 and 6 do not apply to proceedings conducted under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(2) Chapters 4 and 8 do not apply to a hearing conducted by the department of corrections pursuant to chapter IIIA of Act No. 232 of the Public Acts of 1953, being sections 791.251 to 791.256 of the Michigan Compiled Laws.

(3) Chapter 8 does not apply to any of the following:

(a) A contested case or other proceeding regarding the granting or renewing of an operator's or chauffeur's license by the secretary of state.

(b) Proceedings conducted by the Michigan employment relations commission.

(c) Worker's disability compensation proceedings under Act No. 317 of the Public Acts of 1969.

(d) Unemployment compensation hearings under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, being sections 421.1 to 421.75 of the Michigan Compiled Laws.

(e) Family independence agency public assistance hearings under section 9 of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.9 of the Michigan Compiled Laws.

(4) Chapter 6 does not apply to final decisions or orders rendered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws.

(5) Chapters 2, 3, and 5 do not apply to the municipal employees retirement system and retirement board created by the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being sections 38.1501 to 38.1555 of the Michigan Compiled Laws, on and after August 15, 1996.

(6) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to section 401(k) of the internal revenue code under the

state employees' retirement act, Act No. 240 of the Public Acts of 1943, being sections 38.1 to 38.69 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

(7) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to section 403(b) of the internal revenue code under the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1437 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

(8) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to the internal revenue code under the Michigan legislative retirement system act, Act No. 261 of the Public Acts of 1957, being sections 38.1001 to 38.1080 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) House Bill No. 6206.
- (b) House Bill No. 6229.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.