

HOUSE BILL No. 4207

February 7, 2013, Introduced by Reps. Farrington, Howrylak and Rendon and referred to the Committee on Regulatory Reform.

A bill to amend 1969 PA 306, entitled
"Administrative procedures act of 1969,"
by amending section 32 (MCL 24.232), as amended by 2011 PA 270.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32. (1) Definitions of words and phrases and rules of
2 construction prescribed in any statute that are made applicable to
3 all statutes of this state also apply to rules unless clearly
4 indicated to the contrary.

5 (2) A rule or exception to a rule shall not discriminate in
6 favor of or against any person. A person affected by a rule is
7 entitled to the same benefits as any other person under the same or
8 similar circumstances.

1 (3) The violation of a rule is a crime ~~when so~~ **IF** provided by
2 statute. ~~A~~ **UNLESS PROVIDED BY STATUTE, A** rule shall not ~~make~~
3 **DESIGNATE** an act or omission ~~to act~~ **AS** a crime or prescribe a
4 criminal penalty for violation of a rule.

5 (4) An agency may adopt ~~—~~by reference in its rules and
6 without publishing the adopted matter in full ~~—~~all or any part of
7 a code, standard, or regulation that has been adopted by an agency
8 of the United States or by a nationally recognized organization or
9 association. The reference shall fully identify the adopted matter
10 by date and otherwise. The reference shall not cover any later
11 amendments and editions of the adopted matter, but if the agency
12 wishes to incorporate them in its rule, it shall ~~amend~~ **DO SO BY**
13 **AMENDING** the rule or ~~promulgate~~ **PROMULGATING** a new rule. ~~therefor.~~
14 The agency shall have available copies of the adopted matter for
15 inspection and distribution to the public at cost and the rules
16 shall state where copies of the adopted matter are available from
17 the agency and the agency of the United States or the national
18 organization or association and the cost of a copy as of the time
19 the rule is adopted.

20 (5) A guideline, operational memorandum, bulletin,
21 interpretive statement, or form with instructions is not
22 enforceable by an agency, is considered merely advisory, and shall
23 not be given the force and effect of law. An agency shall not rely
24 upon a guideline, operational memorandum, bulletin, interpretive
25 statement, or form with instructions to support the agency's
26 decision to act or refuse to act if that decision is subject to
27 judicial review. A court shall not rely upon a guideline,

1 operational memorandum, bulletin, interpretive statement, or form
2 with instructions to uphold an agency decision to act or refuse to
3 act.

4 (6) ~~Where~~ **IF** a statute provides that an agency may proceed by
5 rule-making or by order and an agency proceeds by order in lieu of
6 rule-making, the order shall not be given general applicability to
7 persons who were not parties to the proceeding or contested case
8 before the issuance of the order, unless the order was issued after
9 public notice and a public hearing.

10 (7) A rule shall not exceed the rule-making delegation
11 contained in the statute authorizing the rule-making.

12 (8) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**
13 **IF THE FEDERAL GOVERNMENT HAS MANDATED THAT THIS STATE PROMULGATE**
14 **RULES, AN AGENCY SHALL NOT PROMULGATE OR ADOPT A RULE MORE**
15 **STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED STANDARD UNLESS**
16 **SPECIFICALLY AUTHORIZED BY A STATUTE OF THIS STATE.**

17 (9) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**
18 **IF THE FEDERAL GOVERNMENT HAS NOT MANDATED THAT THIS STATE**
19 **PROMULGATE RULES, AN AGENCY SHALL NOT PROMULGATE OR ADOPT A RULE**
20 **MORE STRINGENT THAN THE APPLICABLE FEDERAL STANDARD UNLESS**
21 **SPECIFICALLY AUTHORIZED BY A STATUTE OF THIS STATE.**

22 Enacting section 1. This amendatory act takes effect February
23 1, 2014.