

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NC Commission for Public Health

2. Rule citation & name: 15A NCAC 18A .2508 Definitions

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 9/17/19
- b. Proposed Temporary Rule published on the OAH website: 9/20/19
- c. Public Hearing date: 10/11/19
- d. Comment Period: 9/17/19 – 10/17/19
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 9/17/19
- f. Adoption by agency on: 11/6/19
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: SL 2019-88
Effective date: July 8, 2019
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: SL 2019-88 directs the Commission for Public Health (CPH) to adopt rules governing the construction and operation of artificial swimming lagoons by December 1, 2019. Artificial swimming lagoon is defined as any body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the swimming zone that is protective of the public health.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Adoption of temporary rules is necessary for the Commission for Public Health (CPH) to comply with the requirements of SL 2019-88. It would not be feasible for CPH to meet the mandated December 1, 2019 adoption date, if also required to adhere to the requirements for permanent rulemaking in G.S. 150B, Article 2A. It is in the public interest for CPH to proceed with temporary rulemaking to ensure there is regulation of artificial swimming lagoons that is protective of public health in the short term and pursue permanent rulemaking in the long term.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Virginia Niehaus

Phone: (919) 707-5006

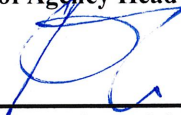
E-Mail: virginia.niehaus@dhhs.nc.gov

Agency contact, if any: Kirsten Leloudis

Phone: (919) 707-5179

E-Mail: kirsten.leloudis@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Dr. Ron May

Title: Chair, NC Commission for Public Health

E-Mail: RMay@carolinaeasthealth.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-88
HOUSE BILL 529

AN ACT PROVIDING THAT THE UTILITIES COMMISSION MAY ADOPT, IMPLEMENT, MODIFY, OR ELIMINATE A RATE ADJUSTMENT MECHANISM FOR WATER OR WASTEWATER PUBLIC UTILITIES TO TRACK AND TRUE-UP VARIATIONS IN AVERAGE PER CUSTOMER USAGE FROM LEVELS APPROVED IN THE GENERAL RATE CASE PROCEEDING; REQUIRING THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES CONCERNING THE CONSTRUCTION AND OPERATION OF ARTIFICIAL SWIMMING LAGOONS; AND REQUIRING THE COMMISSION FOR PUBLIC HEALTH TO STUDY THE REQUIREMENT FOR A PERMANENTLY AFFIXED PHONE AT POOLS FOR EMERGENCY PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"§ 62-133.12A. Customer usage tracking rate adjustment mechanisms for water and wastewater rates.

In setting rates for a water and wastewater utility in a general rate proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism for one or more of the company's rate schedules to track and true-up variations in average per customer usage from levels approved in the general rate case proceeding. The Commission may adopt a rate adjustment mechanism only upon a finding by the Commission that the mechanism is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and the mechanism is in the public interest."

SECTION 2.(a) G.S. 130A-280 reads as rewritten:

"§ 130A-280. Scope.

This Article provides for the regulation of public swimming pools in the State as they may affect the public health and safety. As used in this Article, the term "public swimming pool" means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic club, or other membership facility pools and ~~spas~~, spas, and artificial swimming lagoons. As used in this Article, an "artificial swimming lagoon" means any body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the swimming zone that is protective of the public health. This Article does not apply to a private pool serving a single family dwelling and used only by the residents of the dwelling and their guests. This Article also does not apply to therapeutic pools used in physical therapy programs operated by medical facilities licensed by the Department or operated by a licensed physical therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use."



SECTION 2.(b) No later than December 1, 2019, the Commission for Public Health shall adopt rules governing the construction and operation of artificial swimming lagoons, as defined in G.S. 130A-280, as enacted by Section 2(a) of this act, pursuant to Part 10 of Article 8 of Chapter 130A of the General Statutes.

SECTION 3. The Commission for Public Health shall study the requirements of 15A NCAC 18A .2530(f), which requires that all swimming pools have a telephone capable of directly dialing 911 or other emergency notification system, which telephone is permanently affixed to a location inside or within 75 feet of the pool enclosure and is accessible to all pool users. The Commission shall examine the need for a dedicated permanently affixed telephone in light of widespread cellular telephone availability, and, at a minimum, the Commission shall examine the need for and advisability of requiring closure of pools where a dedicated permanently affixed telephone is temporarily out of service due to technical issues. The Commission shall submit a report of the study's findings and recommendations to the Joint Legislative Oversight Committee on Health and Human Services no later than March 1, 2020.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:47 a.m. this 8th day of July, 2019

1 15A NCAC 18A .2508 is amended under temporary procedures as follows:

2
3 **15A NCAC 18A .2508 DEFINITIONS**

4 The following definitions apply throughout this Section:

5 (1) "Department" means North Carolina Department of Health and Human Services.

6 ~~(+)(2)~~ "Equipment replacement" means replacement of individual components of the hydraulic and
7 disinfection systems such as pumps, filters, and automatic chemical feeders.

8 ~~(2)(3)~~ "Public swimming pool" means public swimming pool as defined in G.S. 130A-280. Public
9 swimming pools are divided into five types:

10 (a) "Swimming pools" are public swimming pools used primarily for swimming.

11 (b) "Spas" are public swimming pools designed for recreational and therapeutic use that are
12 not drained, cleaned, or refilled after each individual use. Spas may include units designed
13 for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any
14 combination thereof. Common terminology for spas includes "therapeutic pool,"
15 "hydrotherapy pool," "whirlpool," "hot spa," and "hot tub."

16 (c) "Wading pools" are public swimming pools designed for use by children, including wading
17 pools for toddlers and children's activity pools designed for casual water play ranging from
18 splashing activity to the use of interactive water features placed in the pool.

19 (d) "Specialized water recreation attractions" are pools designed for special purposes that
20 differentiate them from swimming pools, wading pools and spas. They include:

21 (i) water slide plunge pools and run out lanes, which transfer the kinetic energy of
22 the users' velocity through friction to the slide;

23 (ii) wave pools;

24 (iii) rapid rides;

25 (iv) lazy rivers;

26 (v) interactive play attractions that incorporate devices using sprayed, jetted, or other
27 water sources contacting the users and that do not incorporate standing or captured
28 water as part of the user activity ~~area; and area;~~

29 (vi) training pools deeper than a 24 inch deep wading pool and shallower than a 36
30 inch deep swimming ~~pool; and~~

31 (vii) artificial swimming lagoons as defined in G.S. 130A-280.

32 (e) "Special purpose and therapy pools" are pools designed and used for therapeutic treatments
33 or physical training and fitness outside of a licensed medical facility or practice of a
34 licensed physical therapist. They include:

35 (i) float tanks used for float therapy in a salt brine solution;

36 (ii) swim spa training pools which use jetted water for stationary swimming against a
37 water current;

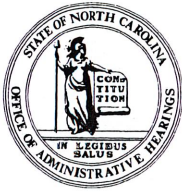
- 1 (iii) exercise therapy and treadmill pools equipped for water resistance exercise
2 therapy; and
3 (iv) scuba pools designed and used for training swimmers to use self-contained
4 underwater breathing apparatus.
- 5 ~~(3)~~(4) "Registered Design Professional" means an individual who is registered or licensed to practice
6 engineering as defined by G.S. 89C or architecture as defined by G.S. 83A.
- 7 ~~(4)~~(5) "Remodeled" means renovated in a manner requiring disruption of the majority of the pool shell or
8 deck, changes in the pool profile, or redesign of the pool hydraulic system.
- 9 ~~(5)~~(6) "Repair" means returning existing equipment to working order, replastering or repainting of the pool
10 interior, replacement of tiles or coping and similar maintenance activities. This term includes
11 replacement of pool decks where the Department has determined that no changes are needed to
12 underlying pipes or other pool structures.
- 13 ~~(6)~~(7) "Safety vacuum release system" means a system or device capable of providing vacuum release at
14 a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.
- 15 ~~(7)~~(8) "Splash zone" means the area of an interactive play attraction that sheds water to a surge tank or
16 container to be recirculated.
- 17 ~~(8)~~(9) "Unblockable drain" means a drain of any size and shape that a human body cannot sufficiently
18 block to create a suction entrapment hazard.
- 19 (10) "Water feature" means any component within a public swimming pool that pumps, jets, or sprays
20 water above the waterline.

21
22 *History Note: Authority G.S. 130A-280; 130A-282; S.L. 2019-88;*

23 *Eff. May 1, 1991;*

24 *Temporary Amendment Eff. June 1, 1994 for a period of 180 days or until the permanent rule*
25 *becomes effective, whichever is sooner;*

26 *Amended Eff. April, 1, 2013; May 1, 2010; March 1, 2004; April 1, 1999; January 1, 1996; October*
27 *1, 1994.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NC Commission for Public Health

2. Rule citation & name: 15A NCAC 18A .2543 Water Recreation Attractions

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 9/17/19
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- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

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- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: SL 2019-88
Effective date: July 8, 2019
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: SL 2019-88 directs the Commission for Public Health (CPH) to adopt rules governing the construction and operation of artificial swimming lagoons by December 1, 2019. Artificial swimming lagoon is defined as any body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the swimming zone that is protective of the public health.

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Virginia Niehaus

Phone: (919) 707-5006

E-Mail: virginia.niehaus@dhhs.nc.gov

Agency contact, if any: Kirsten Leloudis

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E-Mail: kirsten.leloudis@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Dr. Ron May

Title: Chair, NC Commission for Public Health

E-Mail: RMay@carolinaeasthealth.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .2543

DEADLINE FOR RECEIPT: November 15, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, instead of "water recreation attractions" do you mean "specialized water recreation attractions" as defined in .2508(3)(d)?

At line 7, what information are you requiring the engineer or manufacturer to provide?

At line 7, under what circumstances is a deviation "necessary for the proper function of the attraction?"

In (d), line 15, please capitalize "Rules of this Section."

In (c)(4), line 29, what is "ANSI/NSF Standard 50?" Should this be incorporated by reference?

At lines 29-30, under what circumstances do operational requirements make it necessary to deviate from the standard?

In (f)(2), please define "underwater components." Does your regulated public understand the meaning of this term?

In (f)(6), line 35, what entrance are you referring to? An entrance to a swimming zone?

In (f)(9), what is a "zero entry area?"

In (f)(11), line 18, what is a "measurable disinfectant level?"

In (f)(12), please consider using the standard incorporation language: "which is hereby incorporated by reference, including any subsequent amendments and editions . . ."

In (f)(13), line 24 please consider removing the parentheses and saying "Bacteriological samples of enterococcus . . ." if that is your intent.

Ashley Snyder
Commission Counsel
Date submitted to agency: November 8, 2019

In (f)(14)(a), who is the “permitting agency?” Is it the Department?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: November 8, 2019

1 15A NCAC 18A .2543 is amended under temporary procedures as follows:

2
3 **15A NCAC 18A .2543 WATER RECREATION ATTRACTIONS**

4 (a) Water recreation attractions including water slides, wave pools, rapid rides, lazy ~~rivers~~ rivers, artificial swimming
5 lagoons, and other similar features can deviate from the requirements of this Section with respect to pool profile,
6 depth, freeboard, flow dynamics and surface skimming systems. The designing engineer or equipment manufacturer
7 shall provide the Department with information to justify such deviation as necessary for the proper function of the
8 attraction. Water recreation attractions shall meet all other requirements of this Section.

9 (b) Water slide landing pools with a capacity of less than 60,000 gallons shall have a circulation and filtration system
10 capable of turning over the entire pool capacity every two hours. Where automatic chemical controllers are used the
11 turnover time shall be no more than three hours. Landing pool dimensions shall be consistent with the slide
12 manufacturer's recommendation.

13 (c) When waterfalls are incorporated in water recreation attractions, they shall be constructed with no handholds or
14 footholds to a height of four feet to discourage climbing.

15 (d) Interactive play attractions shall be constructed and operated in accordance with the rules of this section and shall
16 comply with the following:

- 17 (1) The recirculation system shall contain a water capacity equal to at least three minutes of maximum
18 flow of all feature pumps and filter circulation pumps combined and shall not be less than 1,000
19 gallons. Where the water capacity exceeds 10,000 gallons, the minimum capacity shall be based on
20 the lesser of three minutes of maximum feature flow or 7.5 gallons per square foot of splash zone
21 watershed drained to the surge container.
- 22 (2) Access shall be provided to the surge water container.
- 23 (3) A filter circulation system shall be provided and shall be separate from the feature pump system
24 except that both systems can draw water from a common drain pipe if the drain and pipe are sized
25 to handle the flow of all pumps without exceeding the flow velocities specified in Rule .2518 of this
26 Section.
- 27 (4) The filter circulation system shall draw water from the surge container through a variable height
28 surface skimmer and a bottom drain located no more than 6 inches from the bottom of the container.
29 Custom skimming systems that do not comply with ANSI/NSF Standard 50 shall be approved where
30 the operational requirements make it necessary to deviate from that standard.
- 31 (5) The filter circulation system shall filter and return the entire water capacity in no more than 30
32 minutes and shall operate 24 hours a day.
- 33 (6) Automatic chemical controllers shall be provided to monitor and adjust the disinfectant residual and
34 pH of the water contained in the system.
- 35 (7) The disinfectant residual in interactive play attractions shall be maintained at a level of at least two
36 parts per million of free chlorine. Chlorine feeders shall be capable of producing 12 parts per million
37 of free chlorine in the filter circulation piping.

- (8) Valves shall be provided to control water flow to the features in accordance with the manufacturers' specifications.
 - (9) Splash zones shall be sloped to drains sized and located to remove all feature water to the surge tank without water accumulating on the surface.
 - (10) Deck or walkway space is not required outside the splash zone.
 - (11) Dressing and sanitary facilities shall be provided.
 - (12) Interactive play features shall not be required to have a fence except the wading pool fence requirements shall apply to interactive play features located inside a swimming pool enclosure.
 - (13) The safety provisions of Rule .2530 of this Section shall not apply except a sign shall be posted prohibiting pets and glass containers.
 - (14) Interactive play attractions built prior to April 1, 2004, that do not comply with these design and construction requirements shall be permitted to operate as built if no water quality or safety violations occur.
- (e) Training pools shall meet the requirements for swimming pools with the following exceptions:
- (1) Training pools shall be equipped with a filter circulation system that filters and returns the entire pool capacity in no more than two hours.
 - (2) The free chlorine residual in training pools shall be maintained at no less than two parts per million.
- (f) Artificial swimming lagoons shall meet the requirements for public swimming pools except as specified in this Rule:
- (1) Pool shells shall not be required. Liners shall meet the requirements of Rule .2514 of this Section.
 - (2) Underwater components or float lines with openings greater than one-half inch shall not be allowed in swimming zones.
 - (3) All swimming zone float rope components shall be a color contrasting with the pool liner. The location of the float rope may vary from the requirements of Rule .2523(e) of this Section regarding breakpoint and slope. A contrasting color band shall not be required on the liner under the rope.
 - (4) Each swimming zone and water feature shall meet water quality standards as required in Rule .2535 of this Section. If the water quality of a swimming zone or water feature does not meet the requirements of Rule .2535 of this Section, the operator shall close the swimming zone or water feature and post a sign at the entrance of the swimming zone with legible letters of at least four inches (10 cm) in height stating "ATTENTION: THE SWIMMING ZONE IS CLOSED. SWIMMING IN THIS AREA IS NOT PERMITTED AT THIS TIME". The swimming zone or water feature shall remain closed until the water quality in the swimming zone or water feature complies with the requirements of Rule .2535 of this Section.
 - (5) All non-swimming zones shall be maintained so the bottom of the lagoon is visible in all areas.
 - (6) A sign shall be posted at all entrances with legible letters of at least four inches (10 cm) in height stating "NOTICE – NO SWIMMING ALLOWED OUTSIDE OF DESIGNATED SWIMMING ZONES".

- (7) Signage shall be provided indicating swimming zones.
- (8) Depth markings and no diving markers shall be provided on decks in swimming zones as required in Rule .2523 of this Section. Signs shall be posted at all entrances to swimming zones with legible letters of at least four inches (10cm) in height stating “NO DIVING” and stating the maximum depth of the swimming zone in Arabic numerals and shall include the word “feet” or the symbol “ft” to indicate the unit of measure.
- (9) Decks may vary from the minimum deck area requirements in Rule .2522 of this Section at zero entry areas located within swimming zones. Access to swimming zones shall be provided for emergency vehicles and personnel. No decks shall be required in non-swimming zones.
- (10) Swimming zones shall meet all safety provisions as set out in Rule .2530 of this Section. Where swimming zones are separated by more than 75 feet, each swimming zone shall separately meet all safety provisions. Non-swimming zones are exempt from the requirements in Rule .2530 of this Section.
- (11) A water treatment system that does not meet the requirements of Rules .2518 and .2519 of this Section shall be approved by the Environmental Health Section of the Department’s Division of Public Health when the treatment system performs in a manner equal or superior to the systems described in Rules .2518 and .2519 of this Section in terms of water clarification, disinfection, and removal of debris, and results in a measurable disinfectant level and pH level as required in subparagraph (f)(4) of this Rule.
- (12) The requirements of Rule .2526(e)–(h) of this Section shall not apply. Sanitary facility requirements shall comply with the 2018 North Carolina State Building Code: Plumbing Code, which is incorporated by reference with subsequent changes or amendments and available free of charge at: <https://codes.iccsafe.org/content/NCPC2018>.
- (13) Bacteriological samples (enterococcus) shall be collected by the operator in non-swimming zones and tested weekly. One sample shall be collected for every 250 feet of shoreline, with no more than 300 feet and no less than 25 feet between any two sampling locations. The samples shall be collected at least one foot below the surface, in at least three feet of water. The samples shall be analyzed by a laboratory accredited by the National Environmental Laboratory Accreditation Program. The test results shall be maintained as part of the records required in Rule .2535(11) of this Section.
- (14) When the result of any test required by subparagraph (f)(13) of this Rule exceeds the standards in Rule .3402(a) of this Subchapter, the operator shall:
- (A) notify the permitting agency and resample the water within 24 hours of receipt of the result from the laboratory; and
- (B) close all non-swimming zones and post a sign at all non-swimming zone entrances with legible letters of at least four inches (10 cm) in height stating “ATTENTION: ALL NON-SWIMMING ZONES ARE CLOSED. RECREATIONAL ACTIVITIES IN THIS AREA ARE NOT PERMITTED AT THIS TIME”. This sign shall remain posted until resampling

determines that bacterial levels do not exceed the standards in Rule .3402(a) of this
Subchapter.

(15) Non-swimming zones shall not be required to comply with the lighting requirements of Rule .2524
of this Section. When night swimming is allowed, the operator shall provide lighting in swimming
zones as required for public swimming pools.

History Note: Authority G.S. 130A-280; 130A-282; S.L. 2019-88;
Eff. April 1, 1999;
Amended Eff. March 1, 2004.