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Model State Administrative Procedure Act

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MODEL STATE ADMINISTRATIVE PROCEDURE ACT

AN ACT concerning procedure of state administrative agencies and review of their determinations

Sec.

- | | |
|--|---|
| 1. Definitions. | 9. Rules of Evidence; Official Notice. |
| 2. Adoption of Rules. | 10. Examination of Evidence by Agency. |
| 3. Filing and Taking Effect of Rules. | 11. Decisions and Orders. |
| 4. Publication of Rules. | 12. Judicial Review of Contested Cases. |
| 5. Petition for Adoption of Rules. | 13. Appeals. |
| 6. Declaratory Judgment on Validity of Rules. | 14. Constitutionality. |
| 7. Petition for Declaratory Rulings by Agencies. | 15. Repeal. |
| 8. Contested Cases; Notice, Hearing, Records. | 16. Time of Taking Effect. |

Be it enacted

§ 1. **Definitions.**—For the purpose of this Act:

(1) “Agency” means any state [board, commission, department, or officer], authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches, and except . . . [here insert the names of any agencies such as the parole boards of certain states, which, though authorized to hold hearings, exercise purely discretionary functions].

(2) “Rule” includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of the agency and not directly affecting the rights of or procedures available to the public.

(3) “Contested case” means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

§ 2. **Adoption of Rules.**—In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this act. Such rules shall include rules of practice before the agency, together with forms and instructions.

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

(3) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall so far as practicable, publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views orally or in writing.

§ 3. **Filing and Taking Effect of Rules.**—(1) Each agency shall file forthwith in the office of the [Secretary of State] a certified copy of each rule adopted by it, including all rules now in effect. The [Secretary of State] shall keep a permanent register of such rules open to public inspection.

(2) Each rule hereafter adopted shall become effective upon filing, unless a later date is required by statute or specified in the rule.

§ 4. **Publication of Rules.**—(1) The [Secretary of State] shall, as soon as practicable after the effective date of this act, compile, index, and publish

all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised as often as necessary [and at least once every two years].

(2) The [Secretary of State] shall publish a [monthly] bulletin in which he shall set forth the text of all rules filed during the preceding [month] excluding rules in effect upon the adoption of this act.

(3) The [Secretary of State] may in his discretion omit from the bulletin or the compilation rules the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if such rules are made available in printed or processed form on application to the adopting agency, and if the bulletin or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(4) Bulletins and compilations shall be made available upon request to [officials of this state] free of charge, and to other persons at a price fixed by the [Secretary of State] to cover publication and mailing costs.

§ 5. **Petition for Adoption of Rules.**—Any interested person may petition an agency requesting the promulgation, amendment, or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

§ 6. **Declaratory Judgment on Validity of Rules.**—(1) The validity of any rule may be determined upon petition for a declaratory judgment thereon addressed to the [District Court] of . . . County, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(2) The court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

§ 7. **Petition for Declaratory Rulings by Agencies.**—On petition of any interested person, any agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. Such a ruling is subject to review in the [District Court] in the manner hereinafter provided for the review of decisions in contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

§ 8. **Contested Cases; Notice, Hearing, Records.**—In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purposes of rehearing or court review. Informal disposition may also be made of any

contested case by stipulation, agreed settlement, consent order, or default. Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.

§ 9. Rules of Evidence; Official Notice.—In contested cases:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(4) Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

§ 10. Examination of Evidence by Agency.—Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. [This section shall not apply to the following agencies . . .].

§ 11. Decisions and Orders.—Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or to his attorney of record.

§ 12. Judicial Review of Contested Cases.—(1) Any person aggrieved by a final decision in contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this act [but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief or trial *de novo*, provided by law].

(2) Proceedings for review shall be instituted by filing a petition in the [District Court] within [thirty] days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and

all other parties of record. [In the manner provided by . . .]. The court, in its discretion, may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the agency decision; but the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within [thirty] days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(6) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(7) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

§ 13. **Appeals.**—An aggrieved party may secure a review of any final judgment of the [District Court] under this act by appeal to the [Supreme Court]. Such appeal shall be taken in the manner provided by law for appeals from the [District Court] in other civil cases.

§ 14. **Constitutionality.**—[If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.]

§ 15. **Repeal.**—All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed, but such repeal shall not affect pending proceedings.

§ 16. **Time of Taking Effect.**—This act shall take effect. . . .