

# SUMMARY OF CHANGES IN CHAPTER 120

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## CHAPTER 94-161

House Bill 1981 Amends Paragraph 120.58(1)(a), F.S., as follows:

Section 1. Paragraph (a) of subsection (1) of section 120.58, Florida Statutes, is amended to read:

120.58 Agency action; evidence, record and subpoenas.--

(1) In agency proceedings for a rule or order:

(a)1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This paragraph applies only to proceedings under s. 120.57.

2. Notwithstanding subparagraph 1., similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this subparagraph, the state shall furnish to the party whose substantial interests are determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

3. Notwithstanding subparagraph 1., in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

a. The testimony of the victim of the sexual misconduct need not be corroborated.

b. Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

(l) It is first established to the hearing officer in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct, or

(II) If consent by the victim of the sexual misconduct is at issue and it is first established to the hearing officer in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

c. Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

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## CHAPTER 94-218

Committee Substitute for Senate Bill 2654 Amends Paragraph 120.57(1)(a), F.S., as follows:

Section 7. Paragraph (a) of subsection (1) of section 120.57, Florida Statutes, is amended to read:

120.57 Decisions which affect substantial interests.-- The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless such proceedings are exempt pursuant to subsection (5). Unless waived by all parties, subsection (1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) applies in all other cases.

(1) FORMAL PROCEEDINGS.--

(a) A hearing officer assigned by the division shall conduct all hearings under this subsection, except for:

1. Hearings before agency heads or a member thereof ~~except other than an agency head or a member of an agency head~~ within the secretary of the Department of Business and Professional Regulation for matters relating to the regulation of professions, as defined in chapter 455, or a board or member of a board within the Department of Business and Professional Regulation for matters relating to the regulation of professions, as defined in chapter 455;

2. Hearings before the Unemployment Appeals Commission in unemployment compensation appeals, unemployment compensation appeals referees, and special deputies pursuant to s. 443.141;

3. Hearings regarding drivers' licensing pursuant to chapter 322;

4. hearings conducted within the Department of Health and Rehabilitative Services in the execution of those social and economic programs administered by the former Division of Family Services of said department prior to the reorganization effected by chapter 75-48, Laws of Florida;

5. Hearings in which the division is a party, in which case an attorney assigned by the Administration Commission shall be the hearing officer;

6. Hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units;

7. Hearings of the Public Employees Relations Commission in which a determination is made of the appropriateness of the bargaining unit, as provided in s. 447.307;

8. Hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601; and

9. Hearings held by the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles to deny, suspend, or remove a wrecker operator from participating in the wrecker rotation system established by s. 321.051. Such hearings shall be held by a hearing officer appointed by the director of the Division of Florida Highway Patrol.

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## CHAPTER 94-353

House Bill 2557 Amends Paragraphs 120.575(1), and (3)(b), F.S., as follows:

Section 28. Effective October 1, 1994, subsection (1) and paragraph (b) of subsection (3) of section 120.575, Florida Statutes, are amended to read:

120.575 Taxpayer contest proceedings.--

(1) In any administrative proceeding brought pursuant to chapter 120 as authorized in s. 72.011(1), the taxpayer or other substantially affected party shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent," except that for actions contesting an assessment or denial of refund under chapter 207 the Department of Highway Safety and Motor Vehicles shall be designated the "respondent" and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565 the Department of Business and Professional Regulation shall be designated the "respondent."

(3)

(b) The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, ~~or by the Department of Highway Safety and Motor Vehicles,~~ or the Department of Business and Professional Regulation.