

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL STATE ADMINISTRATIVE
PROCEDURE ACT (1961)
REVISED 1961 ACT

§ 1. [Definitions].

As used in this Act:

(1) "agency" means each state [board, commission, department, or officer], other than the legislature or the courts, authorized by law to make rules or to determine contested cases;

(2) "contested case" means a proceeding, including but not restricted to ratemaking, [price fixing], and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

(3) "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(4) "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(5) "party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(6) "persons" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

(7) "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include (A) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or (B) declaratory rulings issued pursuant to Section 8, or (C) intra-agency memoranda.

§ 2. [Public Information; Adoption of Rules; Availability of Rules and Orders].

(a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(4) make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

§ 3. [Procedure for Adoption of Rules].

(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings and shall be published in [here insert the medium of publication appropriate for the adopting state];

(2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(b) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days [renewable once for a period not exceeding (4) days], but the adoption of an identical rule under subsections (a)(1) and (a)(2) of this Section is not precluded.

(c) No rule hereafter adopted is valid unless adopted in substantial compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

§ 4. [Filing and Taking Effect of Rules].

(a) Each agency shall file in the office of the [Secretary of State] a certified copy of each rule adopted by it, including all rules existing on the effective date of this Act. The [Secretary of State] shall keep a permanent register of the rules open to public inspection.

(b) Each rule hereafter adopted is effective 20 days after filing, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date;

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing with the [Secretary of State], or at a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

§ 5. [Publication of Rules].

(a) The [Secretary of State] shall compile, index, and publish all effective rules adopted by each agency. Compilations shall be supplemented or revised as often as necessary [and at least once every 2 years].

(b) The [Secretary of State] shall publish a [monthly] bulletin setting forth the text of all rules filed during the preceding [month] excluding rules in effect upon the adoption of this Act.

(c) The [Secretary of State] may omit from the bulletin or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the bulletin or compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

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

§ 6. [Petition for Adoption of Rules].

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denials) or shall initiate rule-making proceedings in accordance with Section 3.

§ 7. [Declaratory Judgment on Validity or Applicability of Rules].

The validity or applicability of a rule may be determined in an action for declaratory judgment in the [District Court of . . . County], if it is alleged 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 plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

§ 8. [Declaratory Rulings by Agencies].

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

§ 9. [Contested Cases; Notice; Hearing; Records].

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) The record in a contested case shall include:

(1) all pleadings, motions, intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing;

(7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(f) Oral proceedings or any part thereof shall be transcribed on request of any party.

(g) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§ 10. [Rules of Evidence; Official Notice].

In contested cases:

(1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in [non-jury] civil cases in the [District Courts of this State] shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

[(2) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;]

(3) a party may conduct cross-examinations required for a full and true disclosure of the facts;

(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

§ 11. [Examination of Evidence by Agency].

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

§ 12. [Decisions and Orders].

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to

his attorney of record.

§ 13. [Ex Parte Consultations].

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member

- (1) may communicate with other members of the agency, and
- (2) may have the aid and advice of one or more personal assistants.

§ 14. [Licenses].

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

§ 15. [Judicial Review of Contested Cases].

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This Section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition in the [District Court of the _____ County] within [30] days after [mailing notice of] the final decision of the agency or, if a rehearing is requested, within [30] days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within [30] days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A 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.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, 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 conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

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

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 16. [Appeals].

An aggrieved party may obtain a review of any final judgment of the [District Court] under this Act by appeal to the [Supreme Court]. The appeal shall be taken as in other civil cases.]

[§ 17. [Severability].

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.]

§ 18. [Repeal].

The following acts and parts of acts are repealed:

(1) _____;

(2) _____;

(3) _____.

§ 19. [Time of Taking Effect and Scope of Application].

This Act takes effect and (except as to proceedings then pending) applies to all agencies and agency proceedings not expressly exempted.