

Chapter 94-161

House Bill No. 1981

An act relating to administrative procedures; amending s. 120.58, F.S.; providing criteria for the admissibility of evidence in certain administrative hearings; requiring notice that certain evidence will be offered; reenacting s. 776.207(2), F.S., to incorporate a reference to s. 120.58(1)(a); providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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:

(I) 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.

Section 2. For the purpose of incorporating the amendment to section 120.58, Florida Statutes, in reference thereto, subsection (2) of section 766.207, Florida Statutes, is reenacted to read:

766.207. Voluntary binding arbitration of medical negligence claims

(2) Upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim intact, the parties may elect to have damages determined by an arbitration panel. Such election may be initiated by either party by serving a request for voluntary binding arbitration of damages within 90 days after service of the claimant's notice of intent to initiate litigation upon the defendant. The evidentiary standards for voluntary binding arbitration of medical negligence claims shall be as provided in s. 120.58(1)(a).

Section 3. This act shall take effect July 1, 1994.

Approved by the Governor May 11, 1994.

Filed in Office Secretary of State May 11, 1994.