

# CHAPTER 99-2

## House Bill No. 1037

An act relating to the Florida Statutes; amending ss. 11.149, 11.242, 11.46, 15.182, 20.19, 20.22, 20.23, 20.315, 20.316, 27.0055, 27.365, 27.702, 28.101, 34.201, 39.01, 39.0132, 39.3031, 39.503, 39.821, 49.011, 50.011, 50.031, 50.051, 63.0427, 63.162, 72.011, 90.4025, 90.953, 92.53, 97.1031, 101.62, 101.65, 104.047, 106.082, 110.112, 110.123, 112.19, 112.191, 112.215, 112.3135, 112.3143, 112.352, 112.361, 120.57, 120.595, 120.81, 121.011, 121.021, 121.046, 121.051, 121.091, 121.125, 121.40, 122.03, 125.0104, 154.503, 161.36, 163.01, 163.03, 163.360, 166.231, 175.021, 175.071, 185.06, 186.001, 186.003, 186.006, 186.505, 199.023, 206.97, 206.9915, 212.06, 212.08, 212.12, 212.20, 213.05, 213.053, 215.32, 215.58, 215.96, 216.0315, 216.136, 216.181, 216.236, 216.237, 216.346, 218.21, 218.65, 220.02, 228.053, 228.055, 228.0565, 229.593, 230.2305, 231.261, 232.246, 233.17, 235.05, 235.2197, 235.435, 236.08107, 236.1228, and 236.685, Florida Statutes; reenacting and amending s. 117.05(5), Florida Statutes; and reenacting ss. 90.503(1), 112.313(9), 197.222(1), and 206.59(4), Florida Statutes, pursuant to s. 11.242, Florida Statutes; deleting provisions which have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; improving the clarity of the statutes and facilitating their correct interpretation; and confirming the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process.

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

Section 47. Paragraphs (d) and (e) of subsection (1) of section 120.57, Florida Statutes, 1998 Supplement, are amended to read:

120.57 Additional procedures for particular cases.--

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

(d) Notwithstanding s. ~~120.569(2)(g)~~ ~~120.569(2)(e)~~, 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 paragraph, the state shall furnish to the party whose substantial interests are being 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.

(e)1. Any agency action that determines the substantial interests of a party and that is based on an unadopted rule is subject to de novo review by an administrative law judge.

2. The agency action shall not be presumed valid or invalid. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority derived from the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious;

e. Is not being applied to the substantially affected party without due notice;

f. Is supported by competent and substantial evidence; and

g. Does not impose excessive regulatory costs on the regulated person, county, or city.

3. The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs ~~(k)(i)~~ and ~~(l)(j)~~, except that the administrative law judge's determination regarding the unadopted rule shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review.

Reviser's note.--Paragraph (1)(d) is amended to conform to the redesignation of subunits of s. 120.569(2) by s. 4, ch. 98-200, Laws of Florida. Paragraph (1)(e) is amended to conform to the redesignation of subunits of s.120.57 by s. 5, ch. 98-200, Laws of Florida.

Section 48. Paragraph (c) of subsection (1) of section 120.595, Florida Statutes, is amended to read:

120.595 Attorney's fees.--

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).--

(c) In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection and s. ~~120.569(2)(e)~~ ~~120.569(2)(e)~~. In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

Reviser's note.--Amended to conform to the redesignation of subunits of s. 120.569(2) by s. 4, ch. 98-200, Laws of Florida.

Section 49. Subsection (4) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.--

(4) REGULATION OF PROFESSIONS.--Notwithstanding s. ~~120.569(2)(e)~~ ~~120.569(2)(e)~~, 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:

1. It is first established to the administrative law judge 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

2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge 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.

Reviser's note.--Amended to conform to the redesignation of subunits of s. 120.569(2) by s. 4, ch. 98-200, Laws of Florida.