

CHAPTER 253

**GOVERNMENT - STATE**

SENATE BILL 93-133

BY SENATOR Blickensderfer;  
also REPRESENTATIVE George.

**AN ACT**

**CONCERNING STATE ADMINISTRATIVE PROCEDURES AND, IN CONNECTION THEREWITH, AMENDING THE "STATE ADMINISTRATIVE PROCEDURE ACT".**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 24-4-102, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-4-102. Definitions.** As used in this article, unless the context otherwise requires:

(6.2) "INTERESTED PERSON" INCLUDES ANY PERSON WHO MAY BE AGGRIEVED BY AGENCY ACTION.

**SECTION 2.** 24-4-103 (3) (b), (6), (8.1) (c), (8.2) (b), and (11) (d), Colorado Revised Statutes, 1988 Repl. Vol., are amended to read:

**24-4-103. Rule-making - procedure.** (3) (b) Each rule-making agency shall maintain a list of all persons who request notification of proposed rule-making INCLUDING TEMPORARY OR EMERGENCY RULE-MAKING. ANY PERSON ON SUCH LIST WHO REQUESTS A COPY OF THE PROPOSED RULES SHALL SUBMIT TO THE AGENCY A FEE WHICH SHALL BE SET BY SUCH AGENCY BASED UPON THE AGENCY'S ACTUAL COST OF COPYING AND MAILING THE PROPOSED RULES TO SUCH PERSON. ALL FEES COLLECTED BY THE AGENCY ARE HEREBY APPROPRIATED TO THE AGENCY SOLELY FOR THE PURPOSE OF DEFRAYING SUCH COST. On or before the date of the publication of notice of proposed rule-making in the Colorado register, the agency shall mail the notice of proposed rule-making to all persons on such list. A person may only request

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

notification on his own behalf, and a request for notification by one person on behalf of another person need not be honored.

(6) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section (or where circumstances imperatively require, without notice) ~~where an~~ ONLY IF THE agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest AND MAKES SUCH A FINDING ON THE RECORD. Such findings and a statement of the reasons for the action shall be published with the rule. A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than three months from the adoption thereof or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section.

(8.1) (c) Upon judicial review, the record required by this section constitutes the official rule-making record with respect to a rule. The agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof; EXCEPT THAT, THIS PARAGRAPH (c) SHALL NOT BE INTERPRETED TO ALLOW THE INTRODUCTION OF EVIDENCE OR INFORMATION INTO SUCH RULE-MAKING RECORD FROM OUTSIDE OF THE PUBLIC RULE-MAKING HEARING, OR TO ALLOW SUCH INTRODUCTION OF EVIDENCE OR INFORMATION WITHOUT NOTICE TO ALL PARTIES TO SUCH HEARING AND OPPORTUNITY TO RESPOND.

(8.2) (b) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of this section shall be commenced within ~~one hundred twenty days~~ THIRTY DAYS after the effective date of the rule.

(11) (d) Each agency subject to the provisions of this section shall, on or before September 1, 1977, file or verify that there is on file with the secretary of state a copy of each currently effective rule specified in subsection (1) of this section. Any rule in effect prior to such date which is not on file with the secretary of state on September 1, 1977, shall not continue in effect on or after January 1, 1978. Each rule adopted on or after September 1, 1977, together with the attorney general's opinion rendered in connection therewith, shall be filed pursuant to subsection (12) of this section within ~~ten~~ TWENTY days thereafter with the secretary of state for publication in the Colorado register. UPON WRITTEN REQUEST OF AN AGENCY, THE SECRETARY OF STATE SHALL CORRECT TYPOGRAPHICAL AND OTHER NON-SUBSTANTIVE ERRORS APPEARING IN THE RULES AS FILED BY SUCH AGENCY THAT OCCUR AFTER FINAL ADOPTION OF THE RULES BY THE AGENCY DURING THE PREPARATION OF SUCH RULES FOR PUBLICATION IN ORDER TO CONFORM THE PUBLISHED RULES WITH THE ADOPTED RULES. Notices of rule-making proceedings pursuant to subsection (3) of this section, which proceedings are to be held after January 1, 1978, shall also be filed with the secretary of state in sufficient time for publication pursuant to subsection (5) of this section in the Colorado register on or after January 1, 1978. Rules revised to conform with action taken by the general assembly shall be filed with the secretary of state for publication in the register and in the code. The legal services committee of the general assembly shall notify the secretary of state whenever a rule published in the

code is rescinded or a portion thereof is deleted by the general assembly and whenever a rule or a portion thereof is allowed to expire in accordance with section 24-4-108 or with subparagraph (I) of paragraph (c) of subsection (8) of this section, and the secretary of state shall direct the removal from the code of material so deleted, rescinded, or allowed to expire.

**SECTION 3.** 24-4-104 (3) and (7), Colorado Revised Statutes, 1988 Repl. Vol., are amended to read:

**24-4-104. Licenses - issuance, suspension or revocation, renewal.** (3) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of facts or conduct that may warrant such action AND afforded the licensee opportunity to submit written data, views, and arguments with respect to such facts or conduct and, except in cases of deliberate and willful violation OR OF SUBSTANTIAL DANGER TO PUBLIC HEALTH AND SAFETY, given the licensee a reasonable opportunity to comply with all lawful requirements.

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a ~~revocation~~ DENIAL. THE LICENSEE, WITHIN SIXTY DAYS AFTER THE GIVING OF NOTICE OF SUCH ACTION, MAY REQUEST A HEARING BEFORE THE AGENCY AS PROVIDED IN SECTION 24-4-105, AND THE ACTION OF THE AGENCY AFTER ANY HEARING SHALL BE SUBJECT TO JUDICIAL REVIEW AS PROVIDED IN SECTION 24-4-106.

**SECTION 4.** 24-4-105 (2), (4), (5), (14), (15) (a), and (16), Colorado Revised Statutes, 1988 Repl. Vol., are amended to read:

**24-4-105. Hearings and determinations.** (2) (a) In any such proceeding in which an opportunity for agency adjudicatory hearing is required under the state constitution or by this or any other statute, the parties are entitled to a hearing and decision in conformity with this section. Any person entitled to notice of a hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Unless otherwise provided by law, such notice shall be served personally or by mailing by first-class mail to the last address furnished the agency by the person to be notified, at least ~~twenty~~ THIRTY days prior to the hearing. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.

(b) ANY PERSON GIVEN SUCH NOTICE SHALL FILE A WRITTEN ANSWER THIRTY DAYS AFTER THE SERVICE OR MAILING OF SUCH NOTICE. IF SUCH PERSON FAILS TO ANSWER, ANY AGENCY, ADMINISTRATIVE LAW JUDGE, OR HEARING OFFICER, UPON MOTION, MAY ENTER A DEFAULT. FOR GOOD CAUSE SHOWN, THE ENTRY OF DEFAULT MAY BE SET ASIDE WITHIN TEN DAYS AFTER THE DATE OF SUCH ENTRY.

(c) A person who may be affected or aggrieved by agency action shall be admitted as a party to the proceeding upon his filing with the agency a written request therefor,

setting forth a brief and plain statement of the facts which entitle him to be admitted and the matters which he claims should be decided. Nothing in this subsection (2) shall prevent an agency from admitting any person or agency as a party to any agency proceeding for limited purposes.

(4) Any agency conducting a hearing, any administrative law judge, and any hearing officer shall have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders which shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to dismiss without prejudice applications and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his presence; AWARD ATTORNEY FEES FOR ABUSES OF DISCOVERY PROCEDURES OR AS OTHERWISE PROVIDED UNDER THE COLORADO RULES OF CIVIL PROCEDURE, and take any other action authorized by agency rule consistent with this article or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(5) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary, or chief administrative officer thereof or, with respect to any hearing for which an administrative law judge or a hearing officer has been appointed, the administrative law judge or the hearing officer. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena; in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court AND MAY AWARD ATTORNEY FEES UNDER THE COLORADO RULES OF CIVIL PROCEDURE. A witness shall be entitled to the fees and mileage provided for a witness in a court of record.

(14) For the purpose of a decision by an agency which conducts a hearing or an initial decision by an administrative law judge or a hearing officer, the record shall include: All pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, any findings of fact and conclusions of law proposed by any party, and any written brief filed. The

agency, administrative law judge, or hearing officer may permit oral argument. No ex parte material or representation of any kind offered without notice shall be received or considered by the agency, the administrative law judge, or by the hearing officer. The agency, an administrative law judge, or hearing officer, with the consent of all parties, may eliminate or summarize any part of the record where this may be done without affecting the decision. In any case in which the agency has conducted the hearing, the agency shall prepare, file, and serve upon each party its decision. In any case in which an administrative law judge or a hearing officer has conducted the hearing, the administrative law judge or the hearing officer shall prepare and file an initial decision which the agency shall serve upon each party, except where all parties with the consent of the agency have expressly waived their right to have an initial decision rendered by such administrative law judge or hearing officer. Each decision and initial decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof. ~~Each promulgation of rules shall be in accordance with the requirements of section 24-4-103 (4).~~ In the absence of an appeal to the agency by filing exceptions WITH SUCH AGENCY within thirty days after service of the initial decision of the administrative law judge or hearing officer upon the parties, unless extended by the agency, or a review upon motion of the agency within thirty days after service of the initial decision of the administrative law judge or the hearing officer, every such initial decision shall thereupon become the decision of the agency. In such case the evidence taken by the administrative law judge or the hearing officer need not be transcribed. FAILURE TO FILE THE EXCEPTIONS PRESCRIBED IN THIS SUBSECTION (14) SHALL RESULT IN A WAIVER OF THE RIGHT TO JUDICIAL REVIEW OF THE FINAL ORDER OF SUCH AGENCY, UNLESS THAT PORTION OF SUCH ORDER SUBJECT TO EXCEPTION IS DIFFERENT FROM THE CONTENT OF THE INITIAL DECISION.

(15) (a) Any party who seeks to reverse or modify the initial decision of the administrative law judge or the hearing officer shall ~~promptly~~ file with the agency, WITHIN TWENTY DAYS FOLLOWING SUCH DECISION, a designation of the RELEVANT PARTS OF THE RECORD DESCRIBED IN SUBSECTION (14) OF THIS SECTION AND OF THE parts of the transcript of the proceedings which shall be prepared and advance the cost therefor. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party or the agency may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefor. The transcript or the parts thereof which may be designated by the parties or the agency shall be prepared by the reporter or, in the case of an electronic recording device, the agency and shall thereafter be filed with the agency. No transcription is required if the agency's review is limited to a pure question of law. The agency may permit oral argument. The grounds of the decision shall be within the scope of the issues presented on the record. The record shall include all matters constituting the record upon which the decision of the administrative law judge or the hearing officer was based, the rulings upon the proposed findings and conclusions, the initial decision of the administrative law judge or the hearing officer, and any other exceptions and briefs filed.

(16) (a) Each decision and initial decision shall be served on each party by personal service or by mailing by first-class mail to the last address furnished the agency by such party and, EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (16), shall be effective as to such party on the date mailed or such later

date as is stated in the decision.

(b) UPON APPLICATION BY A PARTY, AND PRIOR TO THE EXPIRATION OF THE TIME ALLOWED FOR COMMENCING AN ACTION FOR JUDICIAL REVIEW, THE AGENCY MAY CHANGE THE EFFECTIVE DATE OF A DECISION OR INITIAL DECISION.

**SECTION 5.** 24-4-106 (6), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

**24-4-106. Judicial review.** (6) In every case of agency action, the record, ~~on review~~ unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the agency, rulings upon exceptions, and the decision, findings, and action of the agency. ANY PERSON INITIATING JUDICIAL REVIEW SHALL DESIGNATE THE RELEVANT PARTS OF SUCH RECORD AND ADVANCE THE COST THEREFOR. As to alleged errors, omissions, and irregularities in the agency record, evidence may be taken independently by the court.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993