

CHAPTER 101

Senate Bill 167

AN ACT

RELATING TO ADMINISTRATIVE PROCEDURE; AMENDING AND ADDING DEFINITIONS; PROVIDING FOR ADOPTION OF RULES; PROVIDING FOR DECLARATORY JUDGMENTS AND RULINGS, HEARINGS AND ORDERS IN CONTESTED CASES; AMENDING SECTION 41-1001, ARIZONA REVISED STATUTES, AND AMENDING TITLE 41, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-1009 TO 41-1013, INCLUSIVE.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 41-1001, Arizona Revised Statutes, is amended to read:

41-1001. DEFINITIONS

In this article, unless the context otherwise requires:

1. "Agency" means every agency, board, commission, department or officer, authorized by law to exercise rule-making powers or to adjudicate contested cases, whether created by constitutional provision or legislative enactment, but does not include an agency in the judicial or legislative departments of state government.

2. "Contested case" means any 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. "Person" 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 statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, or declaratory rulings issued pursuant to section 41-1007 or intra-agency memoranda.

Sec. 2. Title 41, chapter 6, article 1, Arizona Revised Statutes, is amended by adding sections 41-1009 to 41-1013, inclusive, to read:

41-1009. CONTESTED CASES; NOTICE; HEARING; RECORDS

A. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Unless otherwise provided by law, the notice shall be given at least twenty days prior to the date set for the hearing.

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, and except as to claims for compensation and benefits under chapters 6 and 7 of title 23, 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, interlocutory rulings.

2. Evidence received or considered.
3. A statement of matters officially noticed.
4. Objections and offers of proof 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, other than privileged communications, 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 recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the agency.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

41-1010. HEARINGS; EVIDENCE; OFFICIAL NOTICE; POWER TO REQUIRE TESTIMONY AND RECORDS

Unless otherwise provided by law, in contested cases the following shall apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any judicial decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the agency.

2. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

3. 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.

4. The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Unless otherwise provided by law or agency rule, subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party or the agency and for use as evidence, the officer presiding at the hearing may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in the superior courts of the state of Arizona, unless otherwise provided by law or agency rule.

41-1011. DECISIONS AND ORDERS

Unless otherwise provided by law, any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any 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. Unless otherwise provided by law, parties shall be notified either personally or by mail to their last known address 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.

41-1012. LICENSES; RENEWAL; REVOCATION; SUSPENSION; ANNULMENT; WITHDRAWAL

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 article 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.

41-1013. HEARING ON DENIAL OF LICENSE OR PERMIT

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by section 41-1009. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with the provisions of this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.

Sec. 3. EFFECTIVE DATE

The provisions of this act shall become effective on January 1, 1971, except as to any proceeding pending on such date.

Approved by the Governor—April 28, 1970

Filed in the Office of the Secretary of State—April 28, 1970
