

ENROLLED SENATE  
BILL NO. 328

By: Stipe of the Senate

and

Ross of the House

An Act relating to statutes and reports; amending 75 O.S. 1991, Section 311, as amended by Section 9, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1994, Section 311), which relates to the Administrative Procedures Act; authorizing designee for certain purpose under certain conditions; allowing State Commissioner of Health to delegate certain authority under specified conditions; prohibiting certain construction of section of law; stating when certain order becomes final; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 75 O.S. 1991, Section 311, as amended by Section 9, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1994, Section 311), is amended to read as follows:

Section 311. A. Except as otherwise provided by Section 2 of this act, if the administrative head of an agency has not heard the case or read the record of an individual proceeding, a final agency order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the administrative head who is to render the final agency order. The proposed order shall be accompanied by a statement of the reasons therefor and of each issue of fact or law necessary to the proposed order, prepared by the hearing examiner or by one who has read the record.

B. Such proposed order shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the administrative head is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.

C. The parties by written stipulation may waive compliance with this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of the State Department of Health may delegate the authority to issue a final agency order adverse to a party to an agency administrative law judge if:

1. The administrative law judge has a general knowledge of the Public Health Code, and rules promulgated thereto;

2. The administrative law judge:

- a. is currently licensed to practice law by the Supreme Court of this state,
- b. has a working knowledge of the Administrative Procedures Act and administrative rules of the State Department of Health,
- c. is not an owner, stockholder, employee or officer of, nor has any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the State Department of Health,
- d. is separate and apart from the legal division or office of general counsel of the State Department of Health,
- e. is not responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the State Department of Health, and
- f. has not been engaged in the performance of investigative or prosecuting functions for the State Department of Health regarding the party receiving the final agency order; and

3. The Commissioner in delegating the authority to issue final agency orders adverse to a party pursuant to this section specifically designates by written agency policy and procedure the type or category of final agency order which may be issued by the administrative law judge.

B. The provisions of this section shall not be construed to authorize or allow restraints on the authority of the Commissioner to adopt, reject, review, modify or correct the findings of fact and conclusions of law or any proposed order issued by the administrative law judge.

C. When the administrative law judge issues a final agency order, that order becomes the final order of the State Department of Health without further proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of Title 75 of the Oklahoma Statutes or a filing for judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.