

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2542

By: Steidley

AS INTRODUCED

An Act relating to the Administrative Procedures Act; amending 75 O.S. 1991, Sections 310 and 318, as amended by Section 14, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1995, Section 318), which relate to proceedings before agencies and judicial review; providing evidential standards for individual proceedings and review on appeal; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 75 O.S. 1991, Section 310, is amended to read as follows:

Section 310. In individual proceedings:

~~(1)~~ 1. Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. ~~They~~ The burden of proof in individual proceedings held on or after July 1, 1996, including, but not limited to, disciplinary proceedings against holders of licenses, shall be a preponderance of the evidence. Agencies shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications

between husband and wife during the subsistence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. Agencies may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

~~(2)~~ 2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

~~(3)~~ 3. A party may conduct cross-examinations required for a full and true disclosure of the facts;

~~(4)~~ 4. 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; and

~~(5)~~ 5. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.

SECTION 2. AMENDATORY 75 O.S. 1991, Section 318, as amended by Section 14, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1995, Section 318), is amended to read as follows:

Section 318. A. 1. Any party aggrieved by a final agency order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of this section and Sections 319, 320, 321, 322 and 323 of this title.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

B. 1. The judicial review prescribed by this section for final agency orders, as to agencies whose final agency orders are made subject to review, under constitutional or statutory provisions, by appellate proceedings in the Supreme Court of Oklahoma, shall be afforded by such proceedings taken in accordance with the procedure and under the conditions otherwise provided by law, but subject to the applicable provisions of Sections 250.5 and 319 through 324 323 of this title, and the rules of the Supreme Court.

2. In all other instances, proceedings for review shall be instituted by filing a petition, in the district court of the county in which the party seeking review resides or at the option of such party where the property interest affected is situated, within

thirty (30) days after the appellant is notified of the final agency order as provided in Section 312 of this title.

3. The standard of review on appeal for any final agency order in an individual proceeding held on or after July 1, 1996, shall be substantial evidence.

C. Copies of the petition shall be served upon the agency and all other parties of record, and proof of such service shall be filed in the court within ten (10) days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

D. In any proceedings for review brought by a party aggrieved by a final agency order:

1. The agency whose final agency order was made subject to review may be entitled to recover against such aggrieved party any court costs, witness fees and reasonable attorney fees if the court determines that the proceeding brought by the party is frivolous or was brought to delay the effect of said final agency order; and

2. The party aggrieved by the final agency order may be entitled to recover against such agency any court costs, witness fees, and reasonable attorney fees if the court determines that the proceeding brought by the agency is frivolous.

SECTION 3. This act shall become effective July 1, 1996.

SECTION 4. 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.

45-2-8510

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