

SHORT TITLE: State government; deleting language; prohibition of administrative fines or penalties. Effective date. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1302

By: Kerr

AS INTRODUCED

An Act relating to state government; amending 75 O.S. 1991, Section 303, as last amended by Section 17, Chapter 206, O.S.L. 1997 (75 O.S. Supp. 1997, Section 303), which relates to administrative procedure; deleting language concerning fines and penalties; prohibiting state agencies, departments, boards, or commissions from assessing administrative fines or penalties; providing for codification; 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 303, as last amended by Section 17, Chapter 206, O.S.L. 1997 (75 O.S. Supp. 1997, Section 303), is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or repeal of a rule, the agency shall:

1. Cause notice of any intended action to be published in "The Oklahoma Register" pursuant to subsection B of this section;

2. For at least twenty (20) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;

3. Hold a hearing, if required, as provided by subsection C of this section;

4. Consider the effect its intended action may have on the various types of business and governmental entities. If an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, ~~penalties, fines~~ or reporting procedures and forms to vary according to the size of a business or governmental entity or its ability to comply or both. For business entities, the agency shall include, if practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; and

5. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.

B. The notice required by paragraph 1 of subsection A of this section shall include but not be limited to:

1. In simple language, a brief summary of the rule;
2. The proposed action being taken;
3. The circumstances which created the need for the rule;
4. The specific legal authority authorizing the proposed rule;
5. The intended effect of the rule;

6. The time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 3 of subsection A of this section;

7. Whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;

8. The time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and

9. Where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number of copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in "The Oklahoma Register" pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in "The Oklahoma Register", the agency shall cause a copy of the notice of the proposed rule adoption to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Each agency shall maintain a listing of persons or entities requesting such notice.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within twenty (20) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

- a. at least twenty-five persons,
- b. a political subdivision,
- c. an agency, or
- d. an association having not less than twenty-five members.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than twenty (20) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in "The Oklahoma Register" at least twenty (20) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include but not be limited to:

- a. a brief description of the purpose of the proposed rule,
- b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule,
- c. a description of the classes of persons who will benefit from the proposed rule,
- d. a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- e. the probable costs to the agency and to any other agency of the implementation and enforcement of the state-proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,

- f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,
- g. a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule, and
- h. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. If the Governor fails to waive such requirement, in writing, prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

4. The rule shall not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 324 of Title 75, unless there is created a duplication in numbering, reads as follows:

Effective July 1, 1998, all state departments, agencies, boards or commissions shall be prohibited from assessing administrative fines or penalties.

SECTION 3. This act shall become effective July 1, 1998.

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.

46-2-2332

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