

LEGISLATIVE BILL 992

Approved by the Governor April 16, 1986

Introduced by Beutler, 28

AN ACT relating to rules of administrative agencies; to amend sections 84-901, 84-902, 84-905.01, 84-906, 84-906.05, 84-907, 84-907.01, 84-907.02, and 84-908, Reissue Revised Statutes of Nebraska, 1943, and section 84-906.03, Revised Statutes Supplement, 1984; to abolish the office and position of Revisor of Regulations, the Legislature's Administrative Rules and Regulations Review Committee, and the Administrative Rules and Regulations Review Committee; to provide powers and duties for the Secretary of State; to harmonize provisions; and to repeal the original sections, and also sections 84-901.01, 84-901.02, 84-904, 84-906.02, and 84-908.01 to 84-908.05, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 84-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-901. As used in sections 84-901 to 84-916:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules, except the Adjutant General's office as provided in Chapter 55, the courts, including the Nebraska Workmen's Compensation Court, the Commission of Industrial Relations, the Legislature, and the Revisor of Regulations Secretary of State with respect to the duties imposed by Chapter 84, article 9;

(2) Rule shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public, and not including permits, certificates of public convenience and

necessity, franchises, rate orders, and rate tariffs, and any rules of interpretation thereof, and for the purpose of sections 84-901 to 84-906 this act every rule which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests; and

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing; and

(4) Committee shall mean the Legislature's Administrative Rules and Regulations Review Committee, which shall be a standing committee-

Sec. 2. That section 84-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-902. (1) Each agency shall file with the Revisor of Regulations, no sooner than June 30, 1975, nor later than August 31, 1975, two certified copies of the rules in force and effect for such agency on that date. Thereafter, each agency shall file annually with the Revisor of Regulations two certified copies of any amendments or modifications to the rules in force and effect for such agency no later than June 30 of each year. The Revisor of Regulations shall place and keep one of the certified copies in a permanent file and shall file the remaining certified copy as a library copy to be used by the Legislature-

(2) (1) Each agency shall file forthwith in the office of the Secretary of State a certified copy of the rules in force and effect in such agency, on August 10, 1945. A certified copy of any rule adopted after August 10, 1945 shall likewise be so filed. The Secretary of State shall keep a permanent file of all such rules, which shall be open to public inspection during regular business hours of his or her office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules to be filed as complete file pages and to remove all superseded pages to a separate file. Each agency shall file with the Secretary of State, no sooner than June 30, 1975, nor later than August 31, 1975, a certified copy of the rules in force and effect for such agency on that date. Each agency shall annually file with the Secretary of State a certified copy of any amendments or modifications to rules in force and effect for such agency no later than June 30 of each year.

(2) (3) Rules filed with the Revisor of

Regulations and the Secretary of State pursuant to this section shall be filed in the manner and form prescribed by the Revisor of Regulations Secretary of State. The Secretary of State Revisor of Regulations shall, no later than January 1, 1975, issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting regulations to the Revisor of Regulations and the Secretary of State. Such instructions shall provide for a uniform page size, a generally uniform and clear indexing system, and annotations including designation of enabling legislation and court or agency decisions interpreting the particular rule or regulation. For good cause shown, the Secretary of State Revisor of Regulations, with the consent of the chairman of the Administrative Rules and Regulations Review Committee, may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

(4) Prior to June 30, 1975, each agency shall undertake a complete and thorough review of rules in force and effect for such agency. Regulations that are outdated, inadequate, and repetitious shall be deleted or modified and all of the rules shall be reclassified in conformity with instructions issued by the Revisor of Regulations. All modifications to agency rules shall be made in conformity with section 84-907 far enough in advance of the filing deadline to insure that a final revised copy of the agency rules may be certified and filed with both the Revisor of Regulations and the Secretary of State by the filing deadline.

(5) The Clerk of the Legislature shall deliver to the Revisor of Regulations all records and materials pertaining to administrative rules and regulations on file in the clerk's office.

Sec. 3. That section 84-905.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-905.01. A copy of each amendment or rule to be adopted under this act sections 84-901 to 84-906, prior to the date of filing with the Secretary of State, and the Revisor of Regulations, shall be submitted to the Attorney General for his or her consideration as to the statutory authority and constitutionality of such amendment or rule, and his or her approval or disapproval thereof. If the amendment or rule to be filed is approved as to legality by the Attorney General, he or she shall so indicate with his or her stamp of approval which shall be dated and signed.

Sec. 4. That section 84-906, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

84-906. No rule of any agency shall be valid as against any person until five days after such rule has been filed with the Reviser of Regulations Secretary of State. No rule required under sections 84-901 to 84-906.03 this act to be filed with the Secretary of State and Reviser of Regulations shall remain valid as against any person until the certified copy of the rule shall have been so filed on the date designated and in the form prescribed by the Reviser of Regulations Secretary of State. The filing of any rule as herein provided shall give rise to a rebuttable presumption that it was duly and legally adopted.

Sec. 5. That section 84-906.03, Revised Statutes Supplement, 1984, be amended to read as follows:

84-906.03. It shall be the duty of the Secretary of State; Reviser of Regulations;

(1) To serve as the primary depository of agency rules and regulations and any modifications or amendments to those agency rules and regulations;

(2) To establish and maintain guidelines for all agencies in the preparation and indexing of agency rules and regulations;

(1) (3) To establish and cause to be compiled, indexed by subject, and published a codification system for all rules and regulations filed with the Reviser of Regulations to be designated the Nebraska Administrative Code. All rules and regulations currently on file with the Reviser of Regulations and in effect shall comply with such codification system. The Reviser of Regulations shall establish a time schedule for compliance for each agency filing rules and regulations, except that all agencies shall comply within two years of August 30, 1981. The renumbering of rules and regulations currently filed with the Reviser of Regulations and in effect on August 30, 1981, shall not be deemed to be an amendment or modification of such rules and regulations and shall be exempt from the requirements of Chapter 84, article 9.

(4) After completion of the codification required by subdivision (3) of this section, to

(2) To cause the Nebraska Administrative Code to be computerized to facilitate agencies in revision of their rules and regulations and provide research capabilities; and

(3) (5) To distribute a current copy of existing rules and regulations as accepted by him or her

as filed to the state library and to each county law library of the State of Nebraska making a request for a copy of such rules and regulations; to distribute, on a regular basis, copies of all modifications or amendments to agency rules and regulations as accepted by him or her as filed to the state library and to each county law library of the State of Nebraska which requests copies of all modifications or amendments; to distribute at least four current copies of any rules and regulations accepted by him or her as filed to the Nebraska Publications Clearinghouse to meet the needs of the Nebraska publications depository system; to distribute on a regular basis at least four copies of all modifications or amendments to agency rules and regulations accepted by him or her as filed to the Nebraska Publications Clearinghouse to meet the needs of the Nebraska publications depository system; to distribute a current copy of any existing rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and to distribute, on a regular basis, copies of any or all modifications or amendments to agency rules and regulations as accepted by him or her as filed to all interested persons on request, at a price fixed to cover costs of printing, handling, and mailing.

Sec. 6. That section 84-906.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-906.05. The filing of any rule or regulation pursuant to ~~the provisions of~~ Chapter 84, article 9, if certified and filed with the Reviser of Regulations Secretary of State, shall be received as prima facie evidence of the existence of such rule or regulation and that such rule is as described in the permanent file copy of the Reviser of Regulations Secretary of State. Any rule so certified and filed shall be admitted into evidence without further foundation.

Sec. 7. That section 84-907, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-907. No rule shall be adopted, amended, or repealed by any state agency except after public hearing on the question of adopting, amending, or repealing such rule. Notice of such hearing shall be given at least twenty days prior thereto to the Reviser of Regulations Secretary of State and by publication in a newspaper having general circulation in the state. All such

hearings shall be open to the public. Draft copies or working copies of all rules to be adopted, amended, or repealed by any state agency shall be available to the public in the business office of such agency and the office of the ~~Reviser of Regulations~~ Secretary of State at the time of giving notice. The notice shall include a declaration of availability of such draft or work copies for public examination. Any state agency adopting, amending, or repealing a rule may make written application to the Governor who may, upon receipt of a written showing of good cause, waive the notice of public hearing.

For purposes of this section, good cause shall include, but not be limited to, a showing by the agency that:

(1) Compliance with the public notice requirements of this section would result in extreme hardship on the citizens of this state;

(2) An emergency exists which must be remedied immediately; or

(3) A timely filing or publication of notice of a public hearing was prevented by some unforeseeable event beyond the immediate control of the agency and that the parties affected have not and will not suffer material injury as a result of the agency's action.

Whenever public notice is waived, the agency shall, so far as practicable, give notice to the public of the proposed rule change and of the rule as finally adopted or changed.

Sec. 8. That section 84-907.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-907.01. The ~~Reviser of Regulations~~ Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting, amending, or repealing ~~of~~ any rule of any state agency and shall provide such notice to such subscribers at cost to be assessed against each subscriber.

Sec. 9. That section 84-907.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-907.02. The ~~Reviser of Regulations~~ Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out ~~the provisions of~~ section 84-907.01.

Sec. 10. That section 84-908, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-908. Except as otherwise provided in sections 84-901-02 and 84-908-02 to 84-908-05, no No adoption, amendment, or repeal of any rule shall become effective until the same shall have been approved by the Governor and filed with the Reviser of Regulations Secretary of State after a hearing has been set on such rule pursuant to section 84-907. Any rule properly adopted by any agency shall be filed with the Secretary of State, Reviser of Regulations and by that office referred to the Administrative Rules and Regulations Review Committee-

Sec. 11. That original sections 84-901, 84-902, 84-905.01, 84-906, 84-906.05, 84-907, 84-907.01, 84-907.02, and 84-908, Reissue Revised Statutes of Nebraska, 1943, and section 84-906.03, Revised Statutes Supplement, 1984, and also sections 84-901.01, 84-901.02, 84-904, 84-906.02, and 84-908.01 to 84-908.05, Reissue Revised Statutes of Nebraska, 1943, are repealed.