

LEGISLATIVE BILL 134

Approved by the Governor May 26, 1973

Introduced by Administrative Rules and Regulations
Committee, Duis, 39, Chmn.

AN ACT to amend sections 84-902, 84-905, and 84-906, Reissue Revised Statutes of Nebraska, 1943, and section 84-904, Revised Statutes Supplement, 1972, relating to administrative procedure; to provide for the establishment of the office and position of Revisor of Regulations; to provide for the form, indexing, and filing of rules and regulations; to provide for review; to provide when no rule shall be effective or valid; to provide duties; and to repeal the original sections.

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

Section 1. 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 later than June 30, 1975, a certified copy of the rules in force and effect for such agency on that date. Thereafter, each agency shall file annually with the Revisor of Regulations a certified copy of any amendments or modifications to the rules in force and effect for such agency no later than June 30 of each year.

(2) 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. Such copy or copies shall be printed, typed or mimeographed on legal size paper, properly indexed and bear the effective date. 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 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files current, shall be empowered to require new and amended rules to be filed as complete file pages and to remove all superseded pages to a separate file. The Secretary of State shall prescribe regulations for carrying out the provisions of this act to include: (1) manner of certification of rules filed under this act; (2) form of indexing the file of each agency; (3) method

~~of filing amendments to the rules; (4) the manner in which copies shall be made available to the public from the office of Secretary of State; and (5) the price per copy, unless otherwise specifically provided by statute. Each agency shall file with the Secretary of State, no later than June 30, 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.~~

(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. The 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 Revisor of Regulations, with the consent of the Legislature's committee on administrative agency rules and regulations established under section 84-908, may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

(4) Prior to the June 30, 1975 filing dates provided for in subsections (1) and (2) of this section, 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 recodified 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.

Sec. 2. That section 84-904, Revised Statutes Supplement, 1972, be amended to read as follows:

84-904. (1) Each agency shall file with the Legislature's committee on administrative agency rules and regulations established under section 84-908, no later than June 30, 1975, and thereafter annually no

later than June 30 a certified copy of the rules in force and effect for such agency on that date.

(2) The legislature's committee on administrative agency rules and regulations shall review such agency rules and regulations and shall have the power to recommend to the legislature that the original enabling legislation serving as authority for promulgation of such rules be repealed, changed, altered, amended, or modified in such manner as it deems advisable. Any agency rule or regulation promulgated under a statutory grant of authority shall become null and void upon the effective date of any statute which repeals, changes, alters, amends, or modifies such statutory grant of authority.

(4) Except as provided in subsections (2) and (4) of this section, each agency shall file eight copies with the Nebraska Publications Clearinghouse, and one copy with the Clerk of the legislature, not more than thirty nor less than ten days prior to the commencement of each regular legislative session; a certified copy of the rules of the agency in force and effect at the time of filing, properly indexed in the manner prescribed for filing with the Secretary of State, for the consideration of the legislature. Such rules, when considered by the legislature, may be rejected, changed, altered, amended, or modified in such manner as it deems advisable.

(2) In lieu of the complete compilation provided for in subsection (4) of this section, each agency may file a report showing only the changes, alterations, additions, or deletions in its rules that have been made since the most recent filing with the Clerk of the legislature, together with the affidavit of the head of the agency that there have been no other changes, alterations, additions, or deletions. If there have been no changes, alterations, additions, or deletions, the affidavit shall so state and only the affidavit shall be filed.

(3) A certified duplicate copy of the filing made with the Clerk of the legislature shall be filed with the Secretary of State on the same date. Such certified compilation, when duly filed, shall supersede all rules previously filed. This shall not be construed as precluding any such agency from making additional compilations as often as it is deemed necessary or advisable.

(4) Beginning thirty days prior to the regular session of the legislature in 1973 each agency shall file new rules with the Clerk of the legislature. The clerk shall retain all present rules on file in a separate but

~~secure place for two years; all such transferred rules shall be destroyed by the clerk at the end of the two-year period. Thereafter, each agency shall file a certified copy of its rules as set forth in subsection (4) of this section, or in lieu thereof file an affidavit as set forth in subsection (2) of this section, setting forth by date, rule number, and subject content sufficient to identify such rules, stating which rules on file are still in force. The clerk shall transfer all rules superseded or not covered by affidavit of the agency to a separate but secure place and retain the same for a two-year period after which such rules so transferred shall be destroyed.~~

Sec. 3. That section 84-905, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-905. ~~Each agency shall prepare, compile and print, type or mimeograph a complete certified compilation of all rules duly adopted and in force and effect. Copies shall be made~~ Each agency shall make copies of the rules in force and effect for such agency available to all interested persons on request, at a price fixed to cover costs of publication and mailing; Provided, any such agency may furnish the same without charge, in the discretion of the agency, if funds are available. No rule shall be effective unless copies thereof are available for distribution by the agency to persons requesting the same.

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 Revisor of Regulations. No rule required under this act to be filed with the Secretary of State and Revisor of Regulations shall be 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 Revisor of Regulations. ; ~~and, unless otherwise specifically provided by law, such filing of any rule shall, except where notice by publication is insufficient in law, be sufficient to give notice of the contents of such rule to any person subject thereto or affected thereby.~~ The filing of any rule as herein provided shall give rise to a rebuttable presumption that it was duly and legally adopted.

Sec. 5. There are hereby created, within the office of the Revisor of Statutes, the office of Revisor

of Regulations and the position of Revisor of Regulations.

Sec. 6. It shall be the duty of the Revisor 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; and

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

Sec. 7. The Revisor of Regulations shall form an advisory committee composed of the Secretary of State, the Clerk of the Legislature, the Attorney General, and no less than four other persons serving as representatives of specified state agencies to be selected by the Revisor of Regulations to form a standing advisory committee on the form and indexing of state agency rules and regulations. After consulting with the standing advisory committee, the Revisor of Regulations shall issue, no later than January 1, 1975, instructions to all state agencies setting forth directions for the form and indexing of agency rules and regulations. Thereafter, no later than January 1 of each year the Revisor of Regulations shall notify all state agencies of any modifications or additions to such instructions or that no changes have been made.

Sec. 8. That original sections 84-902, 84-905, and 84-906, Reissue Revised Statutes of Nebraska, 1943, and section 84-904, Revised Statutes Supplement, 1972, are repealed.