

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 614
SENATE BILL 383

AN ACT TO MAKE RULEMAKING AND HEARINGS PROVISIONS IN HUMAN
RESOURCES LEGISLATION CONSISTENT WITH THE ADMINISTRATIVE
PROCEDURE ACT.

Whereas, the North Carolina General Assembly enacted G.S. Chapter 150A, the Administrative Procedure Act, in order to establish a uniform system of administrative procedure for State agencies; and

Whereas, the Department of Human Resources has numerous statutes that prescribe administrative procedures for administrative appeals that predate the Administrative Procedure Act and therefore are inconsistent with the Act; and

Whereas, the Department of Human Resources also has numerous statutes with vague delegation of authority for rulemaking; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 88-23 is amended by rewriting the first sentence to read; "The State Board of Cosmetic Art Examiners shall have authority to make reasonable rules and regulations for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have such rules and regulations enforced."; and is further amended by deleting after the words "said Board" in the third sentence the phrase: "and approved by the Commission for Health Services".

Sec. 2. G.S. 88-28(7) is amended by deleting at the end of the sentence the following phrase: "and approved by the Commission for Health Services".

Sec. 3. G.S. 88-28.1 is amended by rewriting the first sentence to read: "If it is found that any licensed cosmetologist, cosmetic art shop, or other person subject to the provisions of this Chapter is violating any rules and regulations adopted by the State Board of Cosmetic Art Examiners or any provisions of G.S. 88-28, then the Department of Human Resources, any county or district health director, or the State Board of Cosmetic Art Examiners, shall give notice to the person of the violation and apply to the Superior Court for injunctive relief to restrain such person from continuing such illegal practices."

Sec. 4. G.S. 122-16 and 122-16.1 are repealed.

Sec. 5. Article 7 of G.S. Chapter 143, is amended by adding two new sections to read:

§ 143-117.1. Department may make ordinances; penalties for violation. — (a) The Secretary of Human Resources, or his designee, may promulgate regulations for State-owned institutions under the jurisdiction of the Department of Human Resources for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder. Any ordinances promulgated shall be consistent with G.S. 14-132 and shall be filed in accordance with G.S. 150A, known as the Administrative Procedure Act. Copies of the ordinances shall be posted at the entrance to the grounds and at different places on the grounds.

(b) Any person violating such regulations or ordinances shall, upon conviction, be guilty of a misdemeanor and shall be punishable by a fine, not to exceed five hundred dollars (\$500.00), or imprisonment for not more than six months, or both.

"§ 143-117.2. Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions, traffic regulations; registration and regulation of motor vehicles. — (a) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, roads and driveways on the grounds of all State institutions under the jurisdiction of the Department of Human Resources. Any person violating any of the provisions of the Chapter in or on such streets, alleys, roads or driveways shall, upon conviction be punished as prescribed in this section. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the streets, alleys, roads and driveways on the grounds of the State institutions operated by the Department of Human Resources.

(b) The Secretary of Human Resources may promulgate additional rules and regulations consistent with the provisions of Chapter 20, General Statutes of North Carolina, with respect to the use of the streets, alleys, roads and driveways of institutions of the Department of Human Resources, and to establish parking areas on the grounds of the institutions. Based upon a traffic and engineering investigation, the Secretary of Human Resources may also determine and fix speed limits on streets, roads and highways lower than those provided in G.S. 20-141. The Secretary of Human Resources may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of these rules, regulations and ordinances. All regulations and ordinances promulgated under this subsection shall be filed in accordance with G.S. Chapter 150A, known as the Administrative Procedure Act.

(c) Any person violating these regulations or ordinances shall, upon conviction, be guilty of a misdemeanor, and shall be punishable by a fine, not to exceed fifty dollars (\$50.00), or imprisonment, not to exceed 30 days.

(d) The Secretary of Human Resources may promulgate reasonable rules and regulations governing the registration and parking of motor vehicles maintained and operated by employees or their families on the grounds of the institutions, and may in connection with the registration, charge an annual fee."

Sec. 6. G.S. 122-96 is rewritten to read:

"§ 122-96. Recordation of ordinances and regulations; printing and distribution. — All ordinances, rules and regulations promulgated under this Article shall be filed and made available in accordance with G.S. Chapter 150A, known as the Administrative Procedure Act."

Sec. 7. G.S. 122-35.41 is amended by rewriting the last two sentences of that section to read:

"An area mental health, mental retardation, and substance abuse authority may appeal for exceptions to the minimum standards to the Secretary of Human Resources. The Secretary or his designee shall conduct an appeal in accordance with G.S. Chapter 150A and present a proposal for decision to the Commission for Mental Health and Mental Retardation and Substance Abuse Services, which shall have the authority to make the final agency decision."

Sec. 8. G.S. 130-9(e)(1) is rewritten to read:

"§ 130-9(e)(1). The North Carolina Medical Care Commission shall establish standards, adopt rules and regulations for the operation, inspection, and licensing of nursing homes as the same are hereinafter defined."

Sec. 9. G.S. Chapter 143B is amended by repealing G.S. 143B-142(2)(j).

Sec. 10. G.S. Chapter 143B-165 is amended by adding a new subdivision (10) to read:

"(10) The Commission shall have the power and duty to promulgate rules and regulations for the operation of nursing homes, as defined by G.S. 130-9(e)."

Sec. 11. Chapter 130 is amended by repealing G.S. 130-24, G.S. 130-25, and G.S. 130-26, and is further amended by adding a new section G.S. 130-24.1 to read:

"§ 130-24.1. Adoption by reference. — (a) The Commission for Health Services, may, in its rules and regulations promulgated under authority of this Chapter, adopt by reference any code or parts thereof, any federal regulations or parts thereof, any code, standards, or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized organization or association.

(b) Any adoption by reference by the Commission for Health Services shall be in accordance with G.S. Chapter 150A, known as the Administrative Procedure Act, including the filing of the adopted material.

(c) Any local board of health may, in its rules and regulations, adopt by reference any code, standard, or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized association. Copies of any material adopted by reference by a local board of health shall be filed by the local board of health with the Department of Human Resources and the clerk of superior court in the county or counties within the jurisdiction of the local board of health."

Sec. 12. G.S. 130-108 is rewritten to read:

"§ 130-108. Eyes of newborn to be treated; records. — Any person in attendance upon a case of childbirth shall instill or have instilled immediately upon its birth, in the eyes of the newborn, a solution or medication prescribed and approved by the Commission for Health Services for the purpose of preventing infection of the eyes of the newborn. It is the duty of every person in attendance, or the duty of the institution in which the birth takes place, to prepare such records concerning inflammation of the eyes of the newborn as the Commission for Health Services directs."

Sec. 13. G.S. 130-110 is rewritten to read:

"§ 130-110. Duties of Commission for Health Services. — It shall be the duty of the Commission for Health Services to promulgate such rules and regulations as are necessary in the interest of the public health for the carrying out of this Article."

Sec. 14. G.S. 130-112 is amended by the deletion of the phrase "and medications".

Sec. 15. G.S. 130-201 is amended to read:

"§ 130-201. Rules and regulations. — (a) The Commission for Health Services shall promulgate rules and regulations in accordance with G.S. Chapter 150A, known as the Administrative Procedure Act, in order to carry out the intent and purposes of this Article.

(b) The Commission may also promulgate rules and regulations to allow the county medical examiners to use the facilities of the central laboratory and the services of its professional staff in their investigations."

Sec. 16. G.S. 131-126.6 is rewritten to read:

"§ 131-126.6. Denial or revocation of license; hearings and review. — (a) The Department of Human Resources shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this Article or the rules, regulations or minimum standards promulgated under this Article.

(b) This denial, suspension or revocation shall be in accordance with the rules of the Medical Care Commission, and Chapter 150A, known as the Administrative Procedure Act."

Sec. 17. G.S. 131-126.14 is rewritten to read:

"§ 131-126.14. Judicial review. — Any applicant or licensee who is dissatisfied with the decision of the Medical Care Commission as a result of the hearing provided in G.S. 131-126.6 may, within 30 days after a written copy of the decision is served, request judicial review under G.S. 150A, known as the Administrative Procedure Act."

Sec. 18. G.S. 134A-8 is amended by adding a new subsection (7) to read:

"(7) to promulgate rules and regulations to implement the provisions of this Chapter and the responsibilities of the Secretary and the Department of Human Resources under Chapter 7A."

Sec. 19. G.S. 143B-181.1 is amended by redesignating the first and second paragraphs as subsections (a) and (b) and by adding a new paragraph (c) to read:

"(c) The Secretary of Human Resources shall promulgate rules and regulations in accordance with G.S. Chapter 150A, the Administrative Procedure Act, in order to carry out the purposes of this Part and to implement the Older Americans Act, as amended, and the federal regulations implementing the act."

Sec. 20. G.S. 153A-223, is amended by adding after the phrase "(2) The governing body shall, within 30 days after the day the Secretary's notice is received," and before the phrase "initiate appropriate corrective action" the words "request a contested case hearing,".

Sec. 21. Chapter 153A is amended by deleting G.S. 153A-223(3), (4) and (5) and by substituting the following:

"(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150A, Article 3. The issues shall be: (a) whether the facility meets the minimum standards; (b) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (c) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final agency decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary to the senior regular resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior regular resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The Secretary, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150A-37, with the senior regular resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order."

Sec. 22. G.S. 150A-1 is amended by deleting from the first paragraph the phrase "Commission for Youth Services".

Sec. 23. This act shall become effective July 1, 1981.

In the General Assembly read three times and ratified, this the 18th day of June, 1981.