

CHAPTER 54*

UNIFORM ADMINISTRATIVE PROCEDURE ACT

*Cited. 165 C. 448. Former Secs. 4-41 to 4-50 made provision for the adoption of regulations by state agencies, and Sec. 4-41 defined “regulations” as “designed to implement, interpret or prescribe law or to establish the general policy of such department or agency”; not mandatory that such regulations be adopted by motor vehicle department relative to hearings on suspension or revocation of dealers’ licenses, but hearings not to violate the fundamentals of natural justice. *Id.*, 559. Pertinent provisions apply to proceedings of boards of education. 167 C. 368. Motor vehicles commissioner’s conducting of hearing under Sec. 14-111(c) held in compliance with the Uniform Administrative Procedure Act. 168 C. 94. Cited. 170 C. 144; 171 C. 348. Applicability to claims commission (Ch. 53, and especially Sec. 4-164(b)); purposes and legislative history discussed. 172 C. 603. There are clear indications in the act that legislature intended administrators to issue declaratory rulings based on their interpretation of statutes. 173 C. 352. Cited. 174 C. 51; *Id.*, 271; *Id.*, 366; 176 C. 11; *Id.*, 82; *Id.*, 318; *Id.*, 374; *Id.*, 466, 468, 469; *Id.*, 630, 633, 634; 177 C. 68, 71; *Id.*, 78. Use of “guidelines” applied as substantive rules is failure to comply with statute. *Id.*, 356. Cited. *Id.*, 472; 179 C. 415; 180 C. 421. Indian affairs council is an agency subject to chapter. *Id.*, 474. Cited. 181 C. 69; 182 C. 314. Department of Transportation is agency subject to provisions of chapter. 183 C. 76. Cited. *Id.*, 128; *Id.*, 313. Connecticut Housing Finance Authority is required to adopt regulations in accordance with chapter. 184 C. 311; *Id.*, 434. Cited. 186 C. 153; *Id.*, 198. Income maintenance department “policy” requiring AFDC recipients to obtain prior approval of moving expenses is a statement of general applicability affecting the substantial rights of recipients and is therefore a regulation under Sec. 4-166(7) and as such required to be promulgated with certain formalities; because the policy was not so promulgated it could not be enforced. 187 C. 464. Cited. 188 C. 90; 191 C. 173; *Id.*, 384. Jurisdiction of courts over administrative decisions discussed. 193 C. 379. Cited. *Id.*, 506; 194 C. 677; 195 C. 174. Held never to have been applicable to boards of education. *Id.* Cited. *Id.*, 534; 196 C. 451; *Id.*, 623; 197 C. 320; 198 C. 445. Deference to administrative decision-making that is reflected in Uniform Administrative Procedure Act counsels against judicial modification of administratively derived remedial orders in contempt proceedings. *Id.*, 479. Cited. 200 C. 1; *Id.*, 133. Judicial review of administrative agency decision discussed. *Id.*, 489. Cited. *Id.*; 201 C. 350; 202 C. 405; *Id.*, 453; *Id.*, 583; 203 C. 63; 204 C. 17; *Id.*, 60; *Id.*, 137; *Id.*, 259; *Id.*, 287; 205 C. 324; *Id.*, 767; 206 C. 267; 207 C. 77; *Id.*, 296; *Id.*, 346; *Id.*, 547; *Id.*, 674; 208 C. 187; *Id.*, 442; 210 C. 531; *Id.*, 597; 211 C. 508; *Id.*, 690; 212 C. 83; *Id.*, 157; *Id.*, 471; 213 C. 184; *Id.*, 269; 214 C. 256; *Id.*, 560; *Id.*, 601; 215 C. 134; *Id.*, 474; *Id.*, 517; *Id.*, 590; *Id.*, 616; *Id.*, 701; 216 C. 228; *Id.*, 253; *Id.*, 271; *Id.*, 627; *Id.*, 667; 217 C. 130; *Id.*, 143; *Id.*, 153; 218 C. 580; *Id.*, 646; 219 C. 51; *Id.*, 121; *Id.*, 204; 220 C. 86; *Id.*, 192; *Id.*, 516; *Id.*, 689; 221 C. 206; *Id.*, 217; *Id.*, 393; *Id.*, 422; *Id.*, 482; 222 C. 414; *Id.*, 541; 223 C. 376; *Id.*, 573; *Id.*, 618; 224 C. 693; 225 C. 13; 226 C. 105; *Id.*, 670; *Id.*, 792; 227 C. 848; 228 C. 158; *Id.*, 271; *Id.*, 651; *Id.*, 699; *Id.*, 758; 229 C. 654; 231 C. 308; *Id.*, 391; *Id.*, 602; 232 C. 57; *Id.*, 122; *Id.*, 181; 233 C. 28; *Id.*, 398; *Id.*, 486; 234 C. 411; *Id.*, 624; *Id.*, 911; 235 C. 128; *Id.*, 334; 236 C. 96; 237 C. 135; *Id.*, 209; *Id.*, 272; *Id.*, 550; 238 C. 361; 239 C. 32; *Id.*, 124; *Id.*, 437; 240 C. 824; 241 C. 310; 242 C. 152; *Id.*, 599. Judicial review of agency’s action is governed by Uniform Administrative Procedure Act and scope of that review is very restricted. 244 C. 487. Standard of proof in cases involving physician discipline before the Connecticut Medical Examining Board is by a preponderance of the evidence. 309 C. 727.

Cited. 1 CA 1; *Id.*, 454; 2 CA 68; *Id.*, 196; 3 CA 254; *Id.*, 464; *Id.*, 531; 4 CA 143; *Id.*, 307; *Id.*, 359; 5 CA 219; 6 CA 47; *Id.*, 473; *Id.*, 723; 9 CA 622; 10 CA 14; *Id.*, 90; 11 CA 693; 12 CA 251; *Id.*, 455; 13 CA 1; 14 CA 413; 15 CA 569; 17 CA 17; judgment reversed, see 212 C. 570; *Id.*, 429; 18 CA 13. Applies to state

agencies. Id., 40. Cited. Id., 241; 19 CA 539; Id., 713; 20 CA 474; 21 CA 210; Id., 678; 22 CA 181; Id., 253; 24 CA 662; judgment reversed, see 223 C. 618. Guidelines established under P.A. 85-548, Sec. 8, incorporated by reference in Sec. 46b-215b(a), P.A. 89-203, Sec. 2, thus becoming statutory law and not subject to provisions of chapter. 25 CA 555. Cited. 26 CA 45; Id., 132; 27 CA 377; 28 CA 145; Id., 500; 29 CA 821; 30 CA 85; Id., 463; Id., 720; Id., 738; 33 CA 501; Id., 727; Id., 775; 34 CA 343; Id., 352; Id., 620; 35 CA 111; Id., 333; Id., 384; Id., 474; Id., 769; 37 CA 303; Id., 653; Id., 694; Id., 777; 38 CA 73; Id., 322; 39 CA 154; Id., 674; 40 CA 829; 41 CA 1; Id., 67; 42 CA 402; Id., 631; Id., 700; judgment reversed, see 240 C. 835; 43 CA 133; Id., 512; Id. 779; 44 CA 143; Id., 611; 45 CA 83; Id., 225; Id., 476; Id., 543; Id., 577. Commissioner of Motor Vehicles review of license suspension governed by Uniform Administrative Procedure Act; standards for review discussed. 47 CA 111. Scope of review under chapter is restricted. 48 CA 391; Id., 424. Absent state legislation prescribing an applicable standard of proof, preponderance of the evidence is the appropriate standard of proof in administrative proceedings under the Uniform Administrative Procedure Act. 129 CA 575.

Cited. 32 CS 104. Applicability of chapter to state colleges, before and after P.A. 75-529. Procedure to challenge regulations. Id., 153. Cited. 34 CS 199; 35 CS 13; 36 CS 1; Id., 18, 285. Although not addressed in act, where record is incomprehensible, remand to agency prior to final judgment is permissible. Id., 297. Cited. 38 CS 24; 39 CS 56. Hearing board is merely instrumentality of the department and therefore there is no requirement that hearing officer be named in citation or served with a copy. Id., 443. Cited. Id., 462; 40 CS 226; Id., 365; Id., 394; Id., 505; 41 CS 184; Id., 211; Id., 271; 42 CS 323; Id., 413; Id., 558; Id., 602; 43 CS 10; Id., 246; Id., 340; Id., 386; Id., 457; 44 CS 21; Id., 90, 99; Id., 230; Id., 297.

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Sec. 4-166. Definitions. As used in this chapter:

- (1) “Agency” means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly, the courts, the Council on Probate Judicial Conduct, the Governor, Lieutenant Governor or Attorney General, or town or regional boards of education, or automobile dispute settlement panels established pursuant to section 42-181;
- (2) “Approved regulation” means a regulation submitted to the Secretary of the State in accordance with the provisions of section 4-172;
- (3) “Certification date” means the date the Secretary of the State certifies, in writing, that the eRegulations System is technologically sufficient to serve as the official compilation and electronic repository in accordance with section 4-173b;
- (4) “Contested case” means a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176, hearings referred to in section 4-168 or hearings conducted by the Department of Correction or the Board of Pardons and Paroles;
- (5) “Final decision” means (A) the agency determination in a contested case, (B) a declaratory ruling issued by an agency pursuant to section 4-176, or (C) an agency decision made after reconsideration. The term does not include a preliminary or intermediate ruling or order of an agency, or a ruling of an agency granting or denying a petition for reconsideration;
- (6) “Hearing officer” means an individual appointed by an agency to conduct a hearing in an agency proceeding. Such individual may be a staff employee of the agency;
- (7) “Intervenor” means a person, other than a party, granted status as an intervenor by an agency in accordance with the provisions of subsection (d) of section 4-176 or subsection (b) of section 4-177a;

- (8) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes;
- (9) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;
- (10) “Party” means each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding, or (C) who is granted status as a party under subsection (a) of section 4-177a;
- (11) “Person” means any individual, partnership, corporation, limited liability company, association, governmental subdivision, agency or public or private organization of any character, but does not include the agency conducting the proceeding;
- (12) “Presiding officer” means the member of an agency or the hearing officer designated by the head of the agency to preside at the hearing;
- (13) “Proposed final decision” means a final decision proposed by an agency or a presiding officer under section 4-179;
- (14) “Proposed regulation” means a proposal by an agency under the provisions of section 4-168 for a new regulation or for a change in, addition to or repeal of an existing regulation;
- (15) “Regulation” means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings issued pursuant to section 4-176, or (C) intra-agency or interagency memoranda;
- (16) “Regulation-making” means the process for formulation and adoption of a regulation;
- (17) “Regulation-making record” means the documents specified in subsection (b) of section 4-168b and includes any other documents created, received or considered by an agency during the regulation-making process;
- (18) “Regulations of Connecticut state agencies” means the official compilation of all permanent regulations adopted by all state agencies subsequent to October 27, 1970, organized by title number, subtitle number and section number.

(1971, P.A. 854, S. 1; P.A. 73-620, S. 1–3, 19; P.A. 75-529, S. 2, 4; P.A. 78-379, S. 24, 27; P.A. 80-471, S. 1; P.A. 82-338, S. 7; P.A. 87-522, S. 1, 6; P.A. 88-317, S. 1, 107; P.A. 92-160, S. 16, 19; P.A. 95-79, S. 9, 189; P.A. 04-94, S. 1; 04-234, S. 2; P.A. 14-187, S. 1.)

History: P.A. 73-620 redefined “agency”, specifically excepting the governor, lieutenant governor and attorney general, redefined “contested case”, excluding cases involving hearings referred to in Sec. 4-168 and redefined “regulation”, specifically excluding interagency memoranda; P.A. 75-529 redefined “agency” to exclude town or regional boards of education; P.A. 78-379 redefined “agency” to exclude judicial review

council; P.A. 80-471 redefined “regulation” in Subdiv. (7), changed numbered subdivisions to lettered subdivisions and added Subdiv. (8) defining “proposed regulation”; P.A. 82-338 redefined “agency” to specifically exclude council on probate judicial conduct; P.A. 87-522 redefined “agency” to exclude automobile dispute settlement panels; P.A. 88-317 rephrased definition of “agency” in Subdiv. (1), amended definition of “contested case” in Subdiv. (2) to exclude proceedings on declaratory ruling petition, added new Subdivs. (3), (4) and (5), defining “final decision”, “hearing officer” and “intervenor”, renumbered former Subdivs. (3) and (4), defining “license” and “licensing”, to (6) and (7), renumbered former Subdiv. (5), defining “party”, to Subdiv. (8) and substantially amended the definition, renumbered former Subdiv. (6), defining “person”, to Subdiv. (9) and excluded “the agency conducting the proceeding” from the definition in lieu of “an agency”, added new Subdivs. (10), (11) and (12), defining “presiding officer”, “proposed final decision” and “proposed regulation”, renumbered former Subdiv. (7), defining “regulation”, to Subdiv. (13), repealed former Subdiv. (8) defining “proposed regulation” and added new Subdiv. (14) defining “regulation-making”, effective July 1, 1989, and applicable to agency proceedings commenced on or after said date; P.A. 92-160 amended Subdiv. (1) by deleting reference to judicial review council; P.A. 95-79 redefined “person” to include a limited liability company, effective May 31, 1995; P.A. 04-94 amended definition of “contested case” in Subdiv. (2) by replacing “required by statute” with “required by state statute or regulation” and adding exception for hearings conducted by Department of Correction or Board of Parole; P.A. 04-234 replaced Board of Parole with Board of Pardons and Paroles in Subdiv. (2), effective July 1, 2004; P.A. 14-187 added new Subdivs. (2) and (3) defining “approved regulation” and “certification date”, redesignated existing Subdivs. (2) to (14) as Subdivs. (4) to (16) and added Subdivs. (17) and (18) defining “regulation-making record” and “regulations of Connecticut state agencies”, effective June 11, 2014.

Cited. 166 C. 337. The term “state board” includes such entities as the Berlin board of education when acting as agent of the state. 167 C. 368. Cited. 168 C. 435; 172 C. 263; 173 C. 462; 176 C. 82; 184 C. 311; 186 C. 153; 191 C. 173; 198 C. 445; 207 C. 346; 211 C. 690; 212 C. 83; 213 C. 184; 214 C. 560; 215 C. 517; 216 C. 228; 220 C. 516; 231 C. 391; 238 C. 361; 239 C. 32. Because Sec. 22a-371 does not require Commissioner of Environmental Protection to conduct hearing to determine whether an application is complete, commissioner’s rejection notice for plaintiff’s insufficient application did not constitute a final decision in contested case. 263 C. 692. Plaintiff determined to have no statutory right of appeal from decision of Department of Social Services with respect to liens imposed pursuant to Secs. 17b-93 and 17b-94 which provide for reimbursement of Medicaid and public assistance benefits previously paid by state to plaintiff, and therefore hearing is not a “contested case” as defined under Uniform Administrative Procedure Act; trial court judgment reversed and case remanded with direction to dismiss plaintiff’s administrative appeal for lack of subject matter jurisdiction. 273 C. 434. Department of Public Works was not under a statutory or regulatory mandate to conduct a hearing regarding alleged violations of bidding process; there was no agency determination in a contested case; plaintiff had no right to judicial review of commissioner’s decision because it was not aggrieved by a final decision required to trigger judicial review under Uniform Administrative Procedure Act. 282 C. 764.

Cited. 1 CA 1; 9 CA 622; 19 CA 713; 25 CA 555. Harmless error analysis is available in the administrative context. 57 CA 767. Plaintiff was not aggrieved by final decision because the hearing, which was not required by statute, did not constitute contested case within meaning of statute. 75 CA 215. Plaintiff was not barred from pursuing unpaid wages despite investigation conducted pursuant to Sec. 31-76a because res judicata only applies to a final judgment in a contested case and plaintiff withdrew claim prior to final determination; an administrative tribunal’s decision is not entitled to res judicata effect in subsequent proceedings between the parties if the initial decision was not subject to judicial review. 141 CA 110.

Question whether personnel policies of state colleges are “regulations” within meaning of chapter. 32 CS 153.

Cited. 34 CS 225; 36 CS 1; Id., 18; 38 CS 24; 40 CS 365; 44 CS 21.

Subdiv. (1):

Berlin board of education held authorized by law to determine contested cases. 167 C. 368. Cited. 170 C. 668. Exclusions of governor, lieutenant governor and attorney general from definition of “agency” constitute exemptions from chapter. 172 C. 603. Cited. 176 C. 318; Id., 466. Indian affairs council is an “agency” within the meaning of statute. 180 C. 474. Cited. 181 C. 69; 183 C. 76; 193 C. 379; 195 C. 174; 207 C. 77; Id., 674; 208 C. 709; 217 C. 130; 228 C. 651; 231 C. 308; 235 C. 128. Adoption review board is an “agency”. 247 C. 474.

Cited. 3 CA 464; 6 CA 473; 13 CA 1; 17 CA 429; 18 CA 13; 22 CA 181; 35 CA 769.

Cited. 39 CS 443.

Subdiv. (4) (Former Subdiv. (2)):

Hearing under Sec. 10-151(b) is a “contested case”. 167 C. 368. Cited. 171 C. 348; Id., 691; 183 C. 76; Id., 128; 191 C. 497; 193 C. 379; 214 C. 726; 221 C. 422; 224 C. 693; 226 C. 105. Court found legislative intent to limit contested case status to proceedings in which agency is required by statute to provide opportunity for hearing determining party’s legal rights or privileges. Id., 792. Cited. 231 C. 403; 234 C. 411; 235 C. 128; 239 C. 124. Proceeding of adoption review board constitutes a “contested case”. 247 C. 474. Decision, after hearing, terminating authorized vendor from participation in federal Special Supplemental Food Program for Women, Infants and Children (WIC) was not final decision in a contested case since hearing not required by state statute. 262 C. 222. Trial court properly determined that P.A. 04-94, which amended definition of contested case to include a hearing required by “state” statute “or regulation”, did not apply retroactively because that act implements a substantive change in the law. 283 C. 156.

Cited. 2 CA 196; 28 CA 674; 37 CA 653; judgment reversed, see 238 C. 361; Id., 777; 44 CA 143.

Cited. 30 CS 118; 39 CS 202; 42 CS 413; 43 CS 386.

Subdiv. (5) (Former Subdiv. (3)):

Cited. 221 C. 422; 224 C. 693; 227 C. 545; 231 C. 391; 232 C. 181; 234 C. 411; Id., 424; 239 C. 124. Denial of petition to intervene pursuant to Sec. 22a-19 was not a final decision within meaning of statute because it is not the agency determination in a contested case because, in turn, it does not determine the legal rights, duties or privileges of a party and instead, it is more properly considered as a preliminary or intermediate ruling of the agency. 259 C. 131.

Cited. 37 CA 653; judgment reversed, see 238 C. 361; Id., 777; 44 CA 143. Commissioner’s decision denying plaintiff’s petition for reconsideration is not a final decision. 61 CA 137.

Subdiv. (7) (Former Subdiv. (5)):

Cited. 205 C. 324; 207 C. 674; 212 C. 157.

Cited. 3 CA 416; 14 CA 376.

Parties admitted at a Blue Cross rate hearing, need only be served notice of an appeal, not necessarily made parties to the appeals. 31 CS 257.

Subdiv. (8) (Former Subdiv. (6)):

Cited. 226 C. 792; 235 C. 128.

Subdiv. (9) (Former Subdiv. (7)):

Former Sec. 4-41 defined “regulation” as “designed to implement, interpret or prescribe law or to establish the general policy of such department or agency”; not mandatory that such regulations be adopted by motor vehicle department relative to hearings on suspension or revocation of dealers’ licenses, but hearings not to violate the fundamentals of natural justice. 165 C. 559. Cited. 177 C. 356; 183 C. 76. Applicability of statute to regulations promulgated under Sec. 14-298 discussed. *Id.*, 313. Cited. 187 C. 458; 191 C. 384; 200 C. 133; *Id.*, 489; 204 C. 287.

Cited. 41 CS 271.

Subdiv. (10) (Former Subdiv. (8)):

Cited. 30 CA 85.

Subdiv. (11) (Former Subdiv. (9)):

Cited. 37 CA 653; judgment reversed, see 238 C. 361.

Subdiv. (15) (Former Subdiv. (13)):

Department’s use of “one year frequency tidal flood elevation” in proceeding under Sec. 22a-359 did not constitute a regulation or improper rule making since it is not a rule of general applicability and was applied in addition to other evidence. 308 C. 359.

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Sec. 4-167. Rules of practice. Public inspection. Enforceability. (a) In addition to other regulation-making requirements imposed by law, each agency shall: (1) Adopt as a regulation rules of practice setting forth the nature and requirements of all formal and informal procedures available provided such rules shall be in conformance with the provisions of this chapter; and (2) make available for public inspection, upon request, copies of all regulations and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions, and all forms and instructions used by the agency.

(b) No agency regulation is enforceable against any person or party, nor may it be invoked by the agency for any purpose, until (1) it has been made available for public inspection as provided in this section, and (2) the regulation or a notice of the adoption of the regulation has been published in the Connecticut Law Journal if noticed prior to July 1, 2013, or posted on the eRegulations System pursuant to section 4-172 and section 4-173b, if noticed on or after July 1, 2013. This provision is not applicable in favor of any person or party who has actual notice or knowledge thereof. The burden of proving the notice or knowledge is on the agency.

(1971, P.A. 854, S. 2; P.A. 73-620, S. 4, 19; P.A. 76-297, S. 1; P.A. 88-317, S. 2, 107; P.A. 12-92, S. 1; P.A. 13-247, S. 27; 13-274, S. 2; P.A. 14-187, S. 27.)

History: P.A. 73-620 made technical changes; P.A. 76-297 required that rules of practice conform to

provisions of chapter; P.A. 88-317 repealed former Subsec. (a)(4), which required final orders, decisions and opinions to be made available for public inspection, and amended Subsec. (b) to provide that no regulation, except an emergency regulation, is enforceable unless regulation or notice published in law journal and to place burden of proving notice on agency, effective July 1, 1989, and applicable to agency proceedings commenced on or after that date; P.A. 12-92 amended Subsec. (a)(3) to add reference to paper copies and amended Subsec. (b) to require publication if noticed prior to July 1, 2013, and posting online if noticed on or after July 1, 2013, and to delete exemption for regulations adopted under Sec. 4-168(f), effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 13-247 amended Subsec. (b) to replace reference to posting online with reference to posting on eRegulations System under Secs. 4-172 and 4-173b, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 13-274 made identical changes as P.A. 13-247, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 14-187 amended Subsec. (a) to delete former Subdiv. (1) requiring adoption of regulations re description of organization and method of operation and redesignate existing Subdivs. (2) and (3) as Subdivs. (1) and (2), effective June 11, 2014.

Cited. 165 C. 448; 172 C. 263; 173 C. 462; 183 C. 76; 184 C. 311; 186 C. 153; 191 C. 173; 200 C. 489; 239 C. 32.

Cited. 1 CA 1.

Commission on hospitals and health care decision upheld although the commission failed to adopt rules of practice pursuant to Sec. 4-167 because plaintiff failed to assert claim under Sec. 4-174 at hearing. 32 CS 300. Cited. 40 CS 365.

Subsec. (a):

Cited. 201 C. 448. Subdiv. (2): Section not violated by department regulation incorporating by reference Uniform Administrative Procedure Act rules of procedure. 207 C. 77.

Cited. 9 CA 622.

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Sec. 4-168. Notice prior to action on regulations. Fiscal notes. Hearing or public comment. Posting on eRegulations System. Adoption procedure. Emergency regulations. Technical amendments. (a) Except as provided in subsections (g) and (h) of this section, an agency, not less than thirty days prior to adopting a proposed regulation, shall (1) post a notice of its intended action on the eRegulations System, which notice shall include (A) a specified public comment period of not less than thirty days, (B) a description sufficiently detailed so as to apprise persons likely to be affected of the issues and subjects involved in the proposed regulation, (C) a statement of the purposes for which the regulation is proposed, (D) a reference to the statutory authority for the proposed regulation, (E) when, where and how interested persons may obtain a copy of the small business impact and regulatory flexibility analysis required pursuant to section 4-168a, and (F) when, where and how interested persons may present their views on the proposed regulation; (2) post a copy of the proposed regulation on the eRegulations System; (3) give notice electronically to each joint standing committee of the General Assembly having cognizance of the subject matter of the proposed regulation; (4) give notice electronically or provide a paper copy notice, if requested, to all persons who have made requests to the agency for advance notice of its regulation-making proceedings; (5) provide a paper copy or electronic version of the proposed regulation to persons requesting it; and (6) prepare a fiscal note,

including an estimate of the cost or of the revenue impact (A) on the state or any municipality of the state, and (B) on small businesses in the state, including an estimate of the number of small businesses subject to the proposed regulation and the projected costs, including but not limited to, reporting, recordkeeping and administrative, associated with compliance with the proposed regulation and, if applicable, the regulatory flexibility analysis prepared under section 4-168a. The governing body of any municipality, if requested, shall provide the agency, within twenty working days, with any information that may be necessary for analysis in preparation of such fiscal note.

(b) Except as provided in subsections (g) and (h) of this section, during the public comment period specified in subsection (a) of this section, all interested persons shall have reasonable opportunity to submit data, views or arguments in writing on the proposed regulation. The agency shall hold a public hearing on the proposed regulation if requested by fifteen persons, by a governmental subdivision or agency or by an association having not less than fifteen members, if notice of the request is received by the agency not later than fourteen days after the date of posting of the notice by the agency on the eRegulations System. The agency shall consider fully all written and oral submissions respecting the proposed regulation and revise the fiscal note prepared in accordance with the provisions of subdivision (6) of subsection (a) of this section to indicate any changes made in the proposed regulation. On and after the certification date, each agency shall post the proposed regulation and all documents prepared by the agency pursuant to this subsection and subsection (a) of this section on the eRegulations System. Prior to the certification date, each agency shall create and maintain a regulation-making record for each regulation proposed by such agency, which shall be made available to the public. No regulation shall be found invalid due to the failure of an agency to give notice to each committee of cognizance pursuant to subdivision (3) of subsection (a) of this section, provided one such committee has been so notified.

(c) If an agency is required by a public act to adopt regulations, the agency, not later than five months after the effective date of the public act or by the time specified in the public act, shall post on the eRegulations System notice of its intent to adopt regulations. If the agency fails to post the notice within such five-month period or by the time specified in the public act, the agency shall submit an electronic statement of its reasons for failure to do so to the Governor, the joint standing committee having cognizance of the subject matter of the regulations and the standing legislative regulation review committee and on and after the certification date, post such statement on the eRegulations System. The agency shall submit the required regulations to the standing legislative regulation review committee, as provided in subsection (b) of section 4-170, not later than one hundred eighty days after posting the notice of its intent to adopt regulations, or electronically submit a statement of its reasons for failure to do so to the committee.

(d) An agency may begin the regulation-making process under this chapter before the effective date of the public act requiring or permitting the agency to adopt regulations, but no regulation may take effect before the effective date of such act.

(e) After the close of the public comment period and prior to submission to the Attorney General, in accordance with section 4-169, the agency shall post on the eRegulations System a notice describing whether the agency has decided to move forward with the proposed regulation. The agency shall provide such notice electronically to all persons who have submitted oral or written comment on the proposed regulation and shall provide a paper copy of such notice to all persons who have submitted comments in a nonelectronic format. The agency shall also post on the eRegulations System: (1) The final wording of the proposed regulation; (2) a statement of the principal reasons in support of its intended action; and (3) a statement of the principal considerations in opposition to its intended action as urged in written or oral comments on the proposed regulation and its reasons for rejecting such considerations.

(f) Except as provided in subsections (g) and (h) of this section, no regulation may be adopted, amended or repealed by any agency until it is (1) approved by the Attorney General as to legal sufficiency, as provided in section 4-169, (2) approved by the standing legislative regulation review committee, as provided in section 4-170, and (3) posted on the eRegulations System by the office of the Secretary of the State, as provided in section 4-172 and section 4-173b.

(g) (1) An agency may proceed to adopt an emergency regulation in accordance with this subsection without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable if (A) the agency finds that adoption of a regulation upon fewer than thirty days' notice is required (i) due to an imminent peril to the public health, safety or welfare or (ii) by the Commissioner of Energy and Environmental Protection in order to comply with the provisions of interstate fishery management plans adopted by the Atlantic States Marine Fisheries Commission or to meet unforeseen circumstances or emergencies affecting marine resources, (B) the agency states in writing its reasons for that finding, and (C) the Governor approves such finding in writing.

(2) An electronic copy shall be submitted to the standing legislative regulation review committee in the form prescribed in subsection (b) of section 4-170, together with a statement of the terms or substance of the intended action, the purpose of the action and a reference to the statutory authority under which the action is proposed, not later than ten days, excluding Saturdays, Sundays and holidays, prior to the proposed effective date of such regulation. The committee may approve or disapprove the emergency regulation, in whole or in part, within such ten-day period at a regular meeting, if one is scheduled, or may upon the call of either chairman or any five or more members hold a special meeting for the purpose of approving or disapproving the regulation, in whole or in part. Failure of the committee to act on such regulation within such ten-day period shall be deemed an approval. If the committee disapproves such regulation, in whole or in part, it shall notify the agency of the reasons for its action. An approved regulation, posted on the eRegulations System by the office of the Secretary of the State, may be effective for a period of not longer than one hundred twenty days renewable once for a period of not exceeding sixty days, provided notification of such sixty-day renewal is posted on the eRegulations System and an electronic copy of such notice is sent to the committee. The sixty-day renewal period may be extended an additional sixty days for emergency regulations described in subparagraph (A)(ii) of subdivision (1) of this subsection, provided the Commissioner of Energy and Environmental Protection requests of the standing legislative regulation review committee an extension of the renewal period at the time such regulation is submitted or not less than ten days before the first sixty-day renewal period expires and said committee approves such extension. Failure of the committee to act on such request within ten days shall be deemed an approval of the extension. Nothing in this subsection shall preclude an agency proposing such emergency regulation from adopting a permanent regulation that is identical or substantially similar to the emergency regulation, but such action shall not extend the effective date of the emergency regulation.

(3) If the necessary steps to adopt a permanent regulation, including the posting of notice of intent to adopt, preparation and submission of a fiscal note in accordance with the provisions of subsection (b) of section 4-170 and approval by the Attorney General and the standing legislative regulation review committee, are not completed prior to the expiration date of an emergency regulation, the emergency regulation shall cease to be effective on that date.

(h) If an agency finds (1) that technical amendments to an existing regulation are necessary because of (A) the statutory transfer of functions, powers or duties from the agency named in the existing regulation to another agency, (B) a change in the name of the agency, (C) the renumbering of the section of the general statutes containing the statutory authority for the regulation, or (D) a correction in the numbering of the regulation, and no substantive changes are proposed, or (2) that the repeal of a regulation is necessary because the section

of the general statutes under which the regulation has been adopted has been repealed and has not been transferred or reenacted, it may elect to comply with the requirements of subsection (a) of this section or may proceed without prior notice or hearing, provided the agency has posted such amendments to or repeal of a regulation on the eRegulations System. Any such amendments to or repeal of a regulation shall be submitted in the form and manner prescribed in subsection (b) of section 4-170, to the Attorney General, as provided in section 4-169, and to the standing legislative regulation review committee, as provided in section 4-170, for approval and upon approval shall be submitted to the office of the Secretary of the State for posting on the eRegulations System with, in the case of renumbering of sections only, a correlated table of the former and new section numbers.

(i) No regulation adopted after October 1, 1985, is valid unless adopted in substantial compliance with this section. A proceeding to contest any regulation on the ground of noncompliance with the procedural requirements of this section shall be commenced within two years from the effective date of the regulation.

(1971, P.A. 854, S. 3; P.A. 73-616, S. 3; 73-620, S. 5, 19; P.A. 77-604, S. 82, 84; P.A. 78-283, S. 1; P.A. 79-623, S. 4, 5, 8; P.A. 80-471, S. 2; P.A. 83-277, S. 1, 3; P.A. 84-132; P.A. 85-608, S. 1; P.A. 86-250, S. 1, 4; P.A. 88-317, S. 3, 107; P.A. 90-124, S. 1; P.A. 94-179, S. 2; P.A. 96-16; P.A. 97-47, S. 26; P.A. 99-90, S. 2-4; P.A. 00-62; P.A. 05-288, S. 15, 16; P.A. 07-217, S. 9; P.A. 09-19, S. 1; P.A. 11-80, S. 1; 11-81, S. 4; 11-150, S. 18; P.A. 12-92, S. 2; P.A. 13-247, S. 28; 13-274, S. 3; P.A. 14-187, S. 2.)

History: P.A. 73-616 made technical changes; P.A. 73-620 required that requests to present arguments be made within 10 days of proposed regulation's publication and deleted provisions requiring publication of a defense of any regulation's adoption; P.A. 77-604 clarified procedure for adopting emergency regulations by requiring notice to and approval or rejection by regulation review committee at regular or special meeting; P.A. 78-283 allowed disapproval of emergency regulations in whole or in part, required notice to review committee of regulation's renewal and added provisions regarding adoption of emergency regulation as permanent regulation; P.A. 79-623 amended section to include provisions concerning fiscal notes, effective with respect to fiscal year ending June 30, 1980; P.A. 80-471 substantially amended section, in Subsec. (a), changing notice requirement from 20 to 30 days, clarifying contents of notice statement and providing for mailing to interested persons and in Subsec. (b) requiring governor's approval of emergency regulations, changing date of notice to review committee from 5 to 10 days prior to regulation's effective date and requiring regulations to be filed in secretary of the state's office; P.A. 83-277 inserted new Subsec. (c) which sets forth the procedure governing the adoption of technical amendments to agency regulations, relettering former Subsec. (c) accordingly; P.A. 84-132 added requirement that agencies submit proposed regulations to committee within 180 days after publication of notice and permitted technical amendment of regulations without hearing when general statute under which regulations were adopted is repealed; P.A. 85-608 changed publication of notice requirement in Subsec. (a) from one year to five months or by the first day of November following the passage of the act, whichever is earlier; P.A. 86-250 made technical changes including relettering of subsections and deleted requirement that agencies publish notice of intent to adopt regulations by November first following passage of act requiring adoption; P.A. 88-317 relettered subsections and renumbered subdivisions, rearranged and rephrased provisions, made other technical revisions and amended Subsec. (c) to allow agency to begin regulation-making process before effective date of act requiring or authorizing regulations, effective July 1, 1989, and applicable to agency proceedings commenced on or after that date; P.A. 90-124 amended Subsec. (a) to require an agency, prior to adopting a regulation, to give notice of its intended action to each committee of the general assembly having cognizance of the subject of the regulation and provided that no regulation shall be found invalid due to an agency's failure to give such notice to each such committee if one such committee has been so notified; (Revisor's note: In 1993 the reference in Subsec. (d) to "subdivision (5) of subsection (a)" was changed editorially to "subdivision (6) of subsection

(a)” to reflect renumbering of subdivisions in P.A. 90-124, S. 1); P.A. 94-179 amended Subsec. (a)(5) to require regulatory flexibility analysis to be included in fiscal note, if applicable (Revisor’s note: Language newly designated as Subparas. (1) and (2) within Subdiv. (5) was redesignated by the Revisors as Subparas. (A) and (B) for statutory conformity); P.A. 96-16 amended Subsec. (f) to authorize emergency regulations by the Commissioner of Environmental Protection re fishery management and to make technical changes; P.A. 97-47 amended Subsec. (d) by substituting “the Freedom of Information Act, as defined in section 1-18a” for “chapter 3”; P.A. 99-90 amended Subsec. (b) by inserting “as provided in subsection (b) of section 4-170”, amended Subsec. (f)(2) by requiring eighteen copies, instead of seventeen copies, to be submitted to regulation review committee and amended Subsec. (g) by inserting “or (D) a correction in the numbering of the regulation,”; P.A. 00-62 amended Subsec. (f)(2) by adding provision allowing additional 60 days for emergency fisheries regulations; P.A. 05-288 made technical changes in Subsecs. (a) and (g), effective July 13, 2005; P.A. 07-217 made a technical change in Subsec. (b), effective July 12, 2007; P.A. 09-19 amended Subsec. (a)(1) by adding new Subpara. (D) re small business impact and regulatory flexibility analyses and redesignating existing Subpara. (D) as Subpara. (E), and amended Subsec. (a)(5) by replacing “following” with “no later than the date of” and adding provision in Subpara. (B) re impact on small businesses; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” in Subsec. (f), effective July 1, 2011; P.A. 11-81 amended Subsec. (a) by deleting requirement for notice “by mail” in Subdivs. (2) and (3) and by changing “copy” to “paper copy or electronic version” in Subdiv. (4); P.A. 11-150 amended Subsec. (f)(2) to replace reference to 18 copies with “an electronic copy”; P.A. 12-92 amended Subsecs. (a), (b), (d), (e) and (f) to replace references to publication in Connecticut Law Journal or filing with references to posting online by the Secretary, amended Subsec. (a) to apply 30-day notice requirement to Subdivs. (2) to (5), to add “electronically” re notice, to limit fee to paper copies, to delete Subdiv. designators (6) to (8), to add reference to viewing online, to make technical changes and to require the Secretary and agency to post the notice and documents online and the Secretary to electronically notify interested persons, amended Subsec. (b) to make technical changes and to replace references to written statement with references to electronic statement, amended Subsec. (d) to add new Subdivs. (1) to (3) re posting on agency’s web site, submitting to the Secretary for online posting and mailing an electronic or paper copy, and to redesignate existing Subdivs. (1) to (3) as Subparas. (A) to (C), and amended Subsec. (g) to require agency to post amendments or repeal online and to make a technical change, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 13-247 replaced references to posting online with references to posting on eRegulations System, amended Subsecs. (a) and (b) to require agency rather than Secretary to post notice, to require on and after October 1, 2014, all documents including statement of failure to post notice of intent to adopt required regulations to be posted on eRegulations System, and to require provision of paper copy of notice if requested, and amended Subsec. (d) to delete reference to electronically mailing or mailing a paper copy of notice, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 13-274 made identical changes as P.A. 13-247, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 14-187 amended Subsec. (a) to make technical changes, changed requirement in Subsec. (a)(1)(A) to post a statement of terms or substance of proposed regulation to reference to public comment period of not less than 30 days, redesignated existing Subsec. (a)(1)(A) re detailed description of regulation as Subsec. (a)(1)(B), and redesignated existing Subsec. (a)(1)(B) to (E) as Subsec. (a)(1)(C) to (F), added new Subsec. (a)(2) re posting copy of the proposed regulation, redesignated existing Subsec. (a)(2) to (5) as Subsec. (a)(3) to (6), amended Subsec. (a)(4) to add “if requested” re paper copy and to delete provision re charging reasonable fee for notice if not electronic, amended Subsec. (a)(5) to delete reference to reasonable fee for paper copies, designated a portion of existing Subsec. (a) as Subsec. (b), redesignated existing Subsecs. (b) to (h) as Subsecs. (c) to (i), amended redesignated Subsec. (b) to make technical changes, delete provisions re oral comments at a hearing, the public right to inspect, copy, view online and print the fiscal note, change provisions re presenting oral argument to holding a public hearing, change reference to October 1, 2014, to

reference to certification date, add reference to posting proposed regulation and change provision re electronic notification of regulation-making upon request to reference to creating a publicly available regulation-making record, amended redesignated Subsec. (c) to change reference to October 1, 2014, to reference to certification date, amended redesignated Subsec. (e) to change reference re posting regulation from 20 days before submission to regulation review committee to prior to submission to Attorney General, add reference to eRegulations System, delete former Subdiv. (1) and (2) designators and redesignate Subparas. (A) to (C) as Subdivs. (1) to (3), amended redesignated Subsec. (f) to make a technical change, amended redesignated Subsec. (g)(2) to delete reference to submission of original of the emergency regulation, delete reference to the Secretary of the State posting notice of renewal, make technical changes and add provision precluding adoption of identical permanent regulation extending the date of the emergency regulation, effective October 1, 2014, and applicable to regulations noticed on and after that date.

Compliance with Secs. 4-169 and 4-170 is required by this section. 165 C. 448. Cited. 171 C. 691; 172 C. 263; 173 C. 462; 177 C. 356; 183 C. 76; 184 C. 311; 186 C. 153; 187 C. 458; 188 C. 152; 191 C. 173; Id., 384; 200 C. 489; 204 C. 287; 214 C. 601; 223 C. 573; 239 C. 32.

Cited. 1 CA 1; 11 CA 693; 12 CA 455; 16 CA 497; 25 CA 555; 33 CA 775; 37 CA 653; judgment reversed, see 238 C. 361.

Cited. 34 CS 225; 42 CS 323.

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Sec. 4-168a. Regulations affecting small businesses. (a) As used in this section:

(1) “Agency”, “proposed regulation” and “regulation” have the same meanings as provided in section 4-166; and

(2) “Small business” means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than seventy-five full-time employees or has gross annual sales of less than five million dollars, provided that an agency, in adopting regulations in accordance with the provisions of this chapter, may define “small business” to include a greater number of full-time employees, not to exceed applicable federal standards or five hundred, whichever is less, if necessary to meet the needs and address specific problems of small businesses.

(b) Prior to the adoption of any proposed regulation, each agency shall prepare a regulatory flexibility analysis in which the agency shall, to the extent appropriate, utilize regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. Such regulatory methods shall be consistent with public health, safety and welfare. The agency shall use, to the extent appropriate, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses;

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) The consolidation or simplification of compliance or reporting requirements for small businesses;

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(c) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the Department of Economic and Community Development and the joint standing committee of the General Assembly having cognizance of matters relating to commerce of its intent to adopt the proposed regulation. Said department and committee shall advise and assist agencies in complying with the provisions of this section.

(d) The requirements contained in this section shall not apply to emergency regulations issued pursuant to subsection (f) of section 4-168; regulations that do not affect small businesses directly, including, but not limited to, regulations concerning the administration of federal programs; regulations concerning costs and standards for service businesses such as nursing homes, long-term care facilities, medical care providers, day care facilities, water companies, nonprofit 501(c)(3) agencies, group homes and residential care facilities; and regulations adopted to implement the provisions of sections 4a-60g to 4a-60i, inclusive.

(P.A. 87-359, S. 1–3; P.A. 94-179, S. 1; P.A. 95-250, S. 1; P.A. 96-211, S. 1, 5, 6; P.A. 09-19, S. 2; P.A. 10-158, S. 10; P.A. 14-122, S. 66; 14-182, S. 5.)

History: P.A. 94-179 amended Subsec. (b) by requiring each agency to prepare regulatory flexibility analysis prior to adoption of any proposed regulation on and after October 1, 1994, and amended Subsec. (c) by substituting “department of economic development” for “office of small business affairs”; P.A. 95-250 and P.A. 96-211 replaced Commissioner and Department of Economic Development with Commissioner and Department of Economic and Community Development; P.A. 09-19 amended Subsec. (a)(2)(B) to replace “fifty” with “seventy-five”, made technical changes in Subsec. (b) and amended Subsec. (c) by adding Commerce Committee as entity requiring notification and providing advice and assistance; P.A. 10-158 amended Subsec. (b) to change “consider utilizing” to “to the extent appropriate, utilize” and change “consider, without limitation” to “use, to the extent appropriate”; P.A. 14-122 made a technical change in Subsec. (a)(1); P.A. 14-182 made a technical change in Subsec. (d), effective June 12, 2014.

Cited. 239 C. 32.

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Sec. 4-168b. Regulation-making record. (a) On and after the certification date, the official electronic regulation-making record shall be retained on the eRegulations System for each regulation proposed in accordance with the provisions of section 4-168. Prior to the certification date, each agency shall create and maintain a regulation-making record for each regulation proposed by such agency. The regulation-making record shall be made available to the public.

(b) The regulation-making record shall contain at least: (1) The agency’s notice of intent to adopt regulations; (2) any written analysis prepared for the proceeding upon which the regulation is based, including the regulatory flexibility analysis required pursuant to section 4-168a, if applicable; (3) all comments submitted on the proposed regulation; (4) the official transcript, if any, of proceedings upon which the regulation is based or, if not transcribed, any audio recording or stenographic record of such proceedings, and any

memoranda prepared by any member or employee of the agency summarizing the contents of the proceedings; (5) all official documents relating to the regulation, including the regulation submitted to the office of the Secretary of the State in accordance with section 4-172, a statement of the principal considerations in opposition to the agency's action, and the agency's reasons for rejecting such considerations, as required pursuant to section 4-168, and the fiscal note prepared pursuant to subsection (a) of section 4-168 and section 4-170; (6) any petition for the regulation filed pursuant to section 4-174; and (7) all comments or communications between the agency and the legislative regulation review committee. No audio recording of a hearing held pursuant to section 4-168 shall be posted on the eRegulations System unless the Secretary of the State confirms that such posting will not constitute a violation of any state or federal law regarding accessibility for persons with disabilities. Any audio recording of a hearing held pursuant to section 4-168 that is not posted on the eRegulations System shall be maintained by the agency and made available to the public upon request. If an agency determines that any part of the regulation-making record is impractical to display or is inappropriate for public display on the eRegulations System, the agency shall describe the part omitted in a statement posted on the eRegulations System and shall maintain a copy of the omitted material readily available for public inspection at the principal office of the agency.

(c) The regulation-making record need not constitute the exclusive basis for agency action on that regulation or for judicial review thereof.

(P.A. 88-317, S. 8, 107; P.A. 09-19, S. 3; P.A. 12-92, S. 3; P.A. 13-247, S. 29; 13-274, S. 4; P.A. 14-187, S. 3.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commenced on or after that date; P.A. 09-19 amended Subsec. (b)(2) to include regulatory flexibility analyses; P.A. 12-92 amended Subsec. (a) to add provision re posting on the agency web site, and amended Subsec. (b) to replace reference to publications in Connecticut Law Journal with reference to notices of intent submitted to Secretary, to replace "filed in" with "submitted to" and to add reference to Sec. 4-172, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 13-247 amended Subsec. (a) to require record to be electronic and retained on eRegulations System and amended Subsec. (b) to delete references to "copy" of various documents, to delete reference to submission of notice to Secretary and to add provision re posting of audio recordings when not in violation of law, and made conforming changes, effective October 1, 2014, and applicable to regulations noticed on and after that date; P.A. 13-274 made identical changes as P.A. 13-247, effective October 1, 2014, and applicable to regulations noticed on and after that date; P.A. 14-187 amended Subsec. (a) to add reference to "certification date", change reference to agency creating to general requirement of retention of record on system, delete reference to "period required by law" re retention, add reference to prior to certification date, agency creating and maintaining record, delete reference to public availability of materials incorporated by reference and delete reference to inspection and copying, amended Subsec. (b) to insert "at least", make technical changes, delete reference in Subdiv. (3) to written petitions, requests and submissions and comments considered by agency in connection with formulation, proposal or adoption of regulation or regulation proceeding, and add provision re description in lieu of posting portion of record that is impractical or inappropriate for display and maintaining copy for public inspection, and amended Subsec. (c) to make a technical change, effective October 1, 2014, and applicable to regulations noticed on and after that date.

Cited. 239 C. 32.

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Sec. 4-168c. Posting of proposed regulations and regulation-making record prior to certification date. Prior to

the certification date, any provision of the general statutes that requires the posting of a proposed regulation or the regulation-making record associated with a proposed regulation on the eRegulations System shall be construed to require the agency to post such regulation or record on the agency's Internet web site and the Secretary of the State to post a link to such regulation or record on the Internet web site of the Secretary of the State.

(P.A. 14-187, S. 53.)

History: P.A. 14-187 effective June 11, 2014.

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Sec. 4-168d. Register of regulatory activity. The Secretary of the State may, in the Secretary's discretion and within available appropriations, periodically publish a register of regulatory activity. The content of the register may include, but shall not be limited to, the text of notices of intent to adopt regulations posted on the eRegulations System. If produced in electronic format, the register shall be posted on the eRegulations System. If produced as a print publication, the fee for furnishing copies of the register shall be such as will, in the judgment of the Secretary, cover the printing and mailing costs for the register. The Secretary may provide a sufficient number of printed registers free of charge to the Connecticut State Library for distribution to the depository library system provided for in section 11-9c and to the Chief Court Administrator for distribution to the system of law libraries established by section 11-19a.

(P.A. 14-187, S. 9.)

History: P.A. 14-187 effective June 11, 2014.

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Sec. 4-169. Approval of regulation by Attorney General. No adoption, amendment or repeal of any regulation, except a regulation issued pursuant to subsection (g) of section 4-168, shall be effective until the proposed regulation and any revision of a regulation to be resubmitted to the standing legislative regulation review committee has been submitted electronically to the Attorney General by the agency proposing such regulation and approved by the Attorney General or by some other person designated by the Attorney General for such purpose. The review of such regulations by the Attorney General shall be limited to a determination of the legal sufficiency of the proposed regulation. If the Attorney General or the Attorney General's designated representative fails to give notice to the agency of any legal insufficiency within thirty days of the receipt of the proposed regulation, the Attorney General shall be deemed to have approved the proposed regulation for purposes of this section. The approval of the Attorney General shall be provided to the agency electronically, included in the regulation-making record and submitted electronically by the agency to the standing legislative regulation review committee. As used in this section "legal sufficiency" means (1) the absence of conflict with any general statute or regulation, federal law or regulation or the Constitution of this state or of the United States, and (2) compliance with the notice and hearing requirements of section 4-168.

(1971, P.A. 854, S. 4; P.A. 80-471, S. 3; P.A. 87-589, S. 19, 87; P.A. 88-317, S. 4, 107; P.A. 01-195, S. 74, 181; P.A. 04-58, S. 3; P.A. 10-32, S. 153; P.A. 13-247, S. 30; 13-274, S. 5; P.A. 14-187, S. 4.)

History: P.A. 80-471 required that the original, rather than a copy, be submitted to attorney general for

approval and then submitted to review committee and defined “legal sufficiency” for purposes of section; P.A. 87-589 substituted reference to Subsec. (e) for reference to Subsec. (b) of Sec. 4-168; P.A. 88-317 made technical changes, effective July 1, 1989, and applicable to agency proceedings commencing on or after that date; P.A. 01-195 made technical changes, effective July 11, 2001; P.A. 04-58 made technical changes; P.A. 10-32 made a technical change, effective May 10, 2010; P.A. 13-247 added provisions requiring electronic submission and approval of proposed regulations and revisions of regulations to be resubmitted, effective July 1, 2014, and applicable to regulations noticed on and after that date; P.A. 13-274 made identical changes as P.A. 13-247, effective July 1, 2014, and applicable to regulations noticed on and after that date; P.A. 14-187 deleted reference to submission of original of proposed regulation, added provision re inclusion of approval in regulation-making record and made technical changes, effective October 1, 2014, and applicable to regulations noticed on and after that date.

Cited. 165 C. 448; 171 C. 691; 172 C. 263; 173 C. 462; 177 C. 356; 186 C. 153; 187 C. 458; 191 C. 173; Id., 384; 239 C. 32.

Cited. 1 CA 1; 26 CA 132.

Cited. 34 CS 225.

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Sec. 4-170. Legislative regulation review committee. Submission requirements for regulations. Disapproved regulations. Resubmitted regulations. (a) There shall be a standing legislative committee to review all regulations of the several state departments and agencies following the proposal thereof, which shall consist of eight members of the House of Representatives, four from each major party, to be appointed on the first Wednesday after the first Monday in January in the odd-numbered years, by the speaker of said House, and six members of the Senate, three from each major party, to be appointed on or before said dates by the president pro tempore of the Senate. The members shall serve for the balance of the term for which they were elected. Vacancies shall be filled by appointment by the authority making the appointment. There shall be two cochairpersons, one of whom shall be a member of the Senate and one of whom shall be a member of the House of Representatives, each appointed by the applicable appointing authority, provided the cochairpersons shall not be members of the same political party and shall be from alternate parties in the respective houses in each successive term. For purposes of this section, “appointing authority” means the speaker or minority leader of the House of Representatives and the president pro tempore or minority leader of the Senate, as appropriate according to the respective house and party of the member to be appointed. Each chairperson may call meetings of the committee for the performance of its duties.

(b) (1) No adoption, amendment or repeal of any regulation, except a regulation issued pursuant to subsection (g) of section 4-168, shall be effective until (A) an electronic copy of the proposed regulation approved by the Attorney General, as provided in section 4-169, and an electronic copy of the regulatory flexibility analysis as provided in section 4-168a are submitted to the standing legislative regulation review committee in a manner designated by the committee, by the agency proposing the regulation, (B) the regulation is approved by the committee, at a regular meeting or a special meeting called for the purpose, and (C) a certified electronic copy of the regulation is submitted to the office of the Secretary of the State by the agency, as provided in section 4-172, and the regulation is posted on the eRegulations System by the Secretary. (2) The date of submission for purposes of subsection (c) of this section shall be the first Tuesday of each month. Any regulation received by the committee on or before the first Tuesday of a month shall be deemed to have been submitted on the first Tuesday of that month. Any regulation submitted after the first Tuesday of a month shall be deemed to be

submitted on the first Tuesday of the next succeeding month. (3) The form of proposed regulations which are submitted to the committee shall be as follows: New language added to an existing regulation shall be underlined; language to be deleted shall be enclosed in brackets and a new regulation or new section of a regulation shall be preceded by the word “(NEW)” in capital letters. Each proposed regulation shall have a statement of its purpose following the final section of the regulation. (4) The committee may permit any proposed regulation, including, but not limited to, a proposed regulation which by reference incorporates in whole or in part, any other code, rule, regulation, standard or specification, to be submitted in summary form together with a statement of purpose for the proposed regulation. On and after October 1, 1994, if the committee finds that a federal statute requires, as a condition of the state exercising regulatory authority, that a Connecticut regulation at all times must be identical to a federal statute or regulation, then the committee may approve a Connecticut regulation that by reference specifically incorporates future amendments to such federal statute or regulation provided the agency that proposed the Connecticut regulation shall submit for approval amendments to such Connecticut regulations to the committee not later than thirty days after the effective date of such amendment, and provided further the committee may hold a public hearing on such Connecticut amendments. (5) The agency shall also provide the committee with a copy of the fiscal note prepared pursuant to subsection (a) of section 4-168. At the time of submission to the committee, the agency shall submit an electronic copy of the proposed regulation and the fiscal note to (A) the Office of Fiscal Analysis which, not later than seven days after receipt, shall submit an analysis of the fiscal note to the committee; and (B) each joint standing committee of the General Assembly having cognizance of the subject matter of the proposed regulation. No regulation shall be found invalid due to the failure of an agency to submit an electronic copy of the proposed regulation and the fiscal note to each committee of cognizance, provided such regulation and fiscal note have been electronically submitted to one such committee.

(c) The committee shall review all proposed regulations and, in its discretion, may hold public hearings on any proposed regulation and may approve, disapprove or reject without prejudice, in whole or in part, any such regulation. If the committee fails to so approve, disapprove or reject without prejudice a proposed regulation, within sixty-five days after the date of submission as provided in subsection (b) of this section, the committee shall be deemed to have approved the proposed regulation for purposes of this section.

(d) If the committee disapproves a proposed regulation in whole or in part, it shall give notice of the disapproval and the reasons for the disapproval to the agency, and no agency shall thereafter issue any regulation or directive or take other action to implement such disapproved regulation, or part thereof, as the case may be, except that the agency may adopt a substantively new regulation in accordance with the provisions of this chapter, provided the General Assembly may reverse such disapproval under the provisions of section 4-171. If the committee disapproves any regulation proposed for the purpose of implementing a federally subsidized or assisted program, the General Assembly shall be required to either sustain or reverse the disapproval.

(e) If the committee rejects a proposed regulation without prejudice, in whole or in part, it shall notify the agency of the reasons for the rejection and the agency, following approval by the Attorney General for legal sufficiency pursuant to section 4-169, shall resubmit the regulation in revised form to the committee, if the adoption of such regulation is required by the general statutes or any public or special act, not later than the first Tuesday of the second month following such rejection without prejudice and may so resubmit any other regulation, in the same manner as provided in this section for the initial submission. Each resubmission under this subsection shall include a summary of revisions identified by paragraph. The committee shall review and take action on such resubmitted regulation no later than thirty-five days after the date of submission, as provided in subsection (b) of this section. Posting of the notice on the eRegulations System pursuant to the provisions of section 4-168 shall not be required in the case of such resubmission.

(f) If an agency fails to submit any regulation approved in whole or in part by the standing legislative regulation review committee to the office of the Secretary of the State as provided in section 4-172, not later than fourteen days after the date of approval, the agency shall notify the committee, not later than five days after such fourteen-day period, of its reasons for failing to submit such regulation. If any agency fails to comply with the time limits established under subsection (b) of section 4-168, or under subsection (e) of this section, the administrative head of such agency shall submit to the committee a written explanation of the reasons for such noncompliance. The committee, upon the affirmative vote of two-thirds of its members, may grant an extension of the time limits established under subsection (b) of section 4-168 and under subsection (e) of this section. If no such extension is granted, the administrative head of the agency shall personally appear before the standing legislative regulation review committee, at a time prescribed by the committee, to explain such failure to comply. After any such appearance, the committee may, upon the affirmative vote of two-thirds of its members, report such noncompliance to the Governor. Within fourteen days thereafter the Governor shall report to the committee concerning the action the Governor has taken to ensure compliance with the provisions of section 4-168 and with the provisions of this section.

(1971, P.A. 854, S. 5; 1972, P.A. 258, S. 2; P.A. 73-396, S. 1, 2; P.A. 76-297, S. 2; 76-434, S. 3, 12; P.A. 78-283, S. 2; P.A. 79-623, S. 2, 8; P.A. 80-471, S. 4; P.A. 83-322, S. 1, 2; P.A. 85-608, S. 2; P.A. 86-250, S. 2, 4; 86-403, S. 9, 132; P.A. 88-317, S. 5, 107; P.A. 90-124, S. 2; P.A. 94-76; P.A. 95-41; P.A. 99-90, S. 5; P.A. 01-195, S. 75, 181; P.A. 05-288, S. 17; P.A. 09-19, S. 4; P.A. 11-150, S. 19; P.A. 12-92, S. 4, 5; P.A. 13-247, S. 31; 13-274, S. 6; P.A. 14-187, S. 5.)

History: 1972 act specified the form of proposed regulations to be presented to regulation review committee; P.A. 73-396 changed date of appointment from July 1 to the first Wednesday after the first Monday in January of odd-numbered years and required seventeen copies rather than one copy to be given the review committee; P.A. 76-297 allowed submission of regulations in summary form and included procedure for course of action if committee rejects resolution without prejudice; P.A. 76-434 deleted provision providing per diem and reimbursement for expenses; P.A. 78-283 required that regulations be filed in secretary of the state's office and required notification of review committee if filing not performed; P.A. 79-623 added provisions concerning fiscal notes; P.A. 80-471 revised form of submitted regulations and permitted summary form; P.A. 83-322 specified the date of submission of proposed regulations for the purposes of Subsec. (c), and required that the proposed regulations be submitted at the designated office of the legislative regulation review committee; P.A. 85-608 upon disapproval of a proposed regulation, mandated adoption of a substantively new regulation, when required by public act and permitted adoption of any other regulation, mandated resubmission of revised regulation, if the adoption of such regulation is required by public act and permitted resubmission of any other regulation and provided procedures upon failure to comply with time limits imposed by Sec. 4-168; P.A. 86-250 made technical changes, deleted requirement that agency adopt a substantively new regulation in case of disapproval by committee and specified time for resubmittal of regulation rejected without prejudice; P.A. 86-403 made technical change; P.A. 88-317 made technical changes, effective July 1, 1989, and applicable to agency proceedings commencing on or after that date; P.A. 90-124 amended Subsec. (b) to require that agency, at the time of submission of a proposed regulation to the regulation review committee, submit such regulation to each committee of the general assembly having cognizance of the subject of the regulation and provided no regulation shall be found invalid due to an agency's failure to submit such regulation to each such committee if such submission has been made to one such committee; P.A. 94-76 in Subsec. (b) authorized the approval of a Connecticut regulation which specifically incorporates future amendments to a federal statute or regulation; P.A. 95-41 amended Subsec. (e) to change date by which committees shall review and take action on revised regulation from "within" to "no later than" thirty-five days after date of submission; P.A. 99-90 amended Subsec. (b) by dividing the Subsec. into Subdivs. and Subparas., substituting "eighteen copies" for "seventeen copies" and inserting "in a

manner designated by the committee,” in Subdiv. (1), and allowing new language in a regulation to be underlined as an alternative to capital letters, as determined by the committee, in Subdiv. (2) and made technical changes; P.A. 01-195 made technical changes in Subsec. (f), effective July 11, 2001; P.A. 05-288 made a technical change in Subsec. (c), effective July 13, 2005; P.A. 09-19 amended Subsec. (b)(1)(A) to include regulatory flexibility analyses and made technical changes in Subsec. (b)(5); P.A. 11-150 amended Subsec. (b) to substitute “an electronic copy” for “eighteen copies”, to require agency to submit an electronic copy of the regulation and fiscal note, and to make technical changes; P.A. 12-92 amended Subsec. (b)(1)(C) to add references to certified and electronic copy and to online posting of the regulation, effective July 1, 2013, and amended Subsec. (e) to replace reference to publication in Connecticut Law Journal with reference to posting online and amended Subsec. (f) to make technical changes, effective July 1, 2013, and applicable to regulations noticed on and after that date; P.A. 13-247 amended Subsec. (a) to replace provision re election of chairpersons with provision re appointment of chairpersons by appointing authority and to define “appointing authority”, amended Subsec. (b) to add references to electronic copy and posting of regulation on eRegulations System rather than online, to require new language to be underlined, to delete reference to capital letters for new language and to make technical changes, and amended Subsec. (e) to replace provision re posting online with provision re posting on eRegulations System, effective July 1, 2014, and applicable to regulations noticed on and after that date; P.A. 13-274 made identical changes as P.A. 13-247, effective July 1, 2014, and applicable to regulations noticed on and after that date; P.A. 14-187 amended Subsecs. (b), (c) and (d) to make technical changes and amended Subsec. (e) to add reference to approval for legal sufficiency by Attorney General and to make technical changes, effective October 1, 2014, and applicable to regulations noticed on and after that date.

Cited. 165 C. 448; 168 C. 597; 171 C. 691; 172 C. 263; 173 C. 462; 177 C. 356. Constitutionality of statute not in question since disputed regulation was not subject to review under the statutes. 183 C. 313. Cited. 186 C. 153; 187 C. 458; 191 C. 173; Id., 384; 200 C. 133; 202 C. 583; 204 C. 122; Id., 287; 215 C. 590; 217 C. 631; 221 C. 206; 232 C. 599; 234 C. 614; 239 C. 32.

Cited. 1 CA 1; 26 CA 132; 28 CA 145; 39 CA 216.

Cited. 34 CS 225; 42 CS 602.

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Sec. 4-170a. Review of old regulations. Section 4-170a is repealed.

(P.A. 73-512; P.A. 88-317, S. 106, 107.)

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Sec. 4-170b. Agency submission to legislative regulation review committee upon failure to submit or resubmit required regulations. On or before December first of each year, each agency shall submit to the standing legislative regulation review committee:

(1) A list of every section of the general statutes that requires the agency to adopt regulations on or before January first of such year if the agency (A) has not submitted the proposed regulations to the committee as provided in section 4-170 by said December first, or (B) submitted proposed regulations which were rejected without prejudice by the committee and the agency has not resubmitted the proposed regulations to the

committee as provided in section 4-170 by said December first;

(2) A date by which the agency proposes to submit or resubmit each of the proposed regulations; and

(3) An explanation in writing by the administrative head of the agency of the reasons each such proposed regulation was not submitted or resubmitted to the committee on or before the date by which the agency is required by the general statutes to adopt the regulation.

(P.A. 97-29, S. 1, 3.)

History: P.A. 97-29 effective July 1, 1997.

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Sec. 4-171. Submission to General Assembly of disapproved regulations and list of required regulations not submitted or resubmitted to legislative regulation review committee. On or before February fifteenth of each regular session of the General Assembly, the cochairpersons of the standing legislative regulation review committee shall submit to the General Assembly for its study (1) a copy of all proposed regulations which have been disapproved by the standing committee under subsection (c) of section 4-170, and (2) a list by agency of each section of the general statutes that requires the agency to adopt regulations on or before January first of the preceding year which the agency did not submit or resubmit to the committee by December first of such year as provided in section 4-170b. Such regulations that were disapproved shall be referred by the speaker of the House or by the president pro tempore of the Senate to an appropriate committee for its consideration and the committee shall schedule hearings thereon. The General Assembly may, by resolution, either sustain or reverse a vote of disapproval of the standing committee under the provisions of said subsection (c), except that if the General Assembly fails during its regular session to reverse by resolution the disapproval of a regulation proposed for the purpose of implementing a federally subsidized or assisted program, the vote of disapproval shall be deemed sustained for purposes of this section and the proposed regulation shall not become effective. Any action of the General Assembly under the provisions of this section shall be effective as of the date of passage of the resolution in the second house of the General Assembly.

(1971, P.A. 854, S. 6; P.A. 76-297, S. 3; P.A. 80-471, S. 5; P.A. 88-317, S. 6, 107; P.A. 90-230, S. 4, 101; P.A. 97-29, S. 2, 3.)

History: P.A. 76-297 clarified officer of senate intended by making "president of the senate" "president pro tempore ..."; P.A. 80-471 replaced reference to Subsec. (b) of Sec. 4-170 with reference to Subsec. (c) and changed provisions regarding sustaining disapproval of regulations to provisions regarding reversal of disapproval of regulations; P.A. 88-317 made technical changes, effective July 1, 1989, and applicable to agency proceedings commencing on or after that date; P.A. 90-230 made a technical change; P.A. 97-29 added requirement for submission of list of required agency regulations not submitted or resubmitted as provided in Sec. 4-170b, effective July 1, 1997.

Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; 239 C. 32.

Cited. 1 CA 1.

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Sec. 4-172. Submittal of certified electronic copies of regulations to Secretary of the State. Posting on eRegulations System. Effective date. (a) After approval of a regulation as required by sections 4-169 and 4-170, or after reversal of a decision of the standing legislative regulation review committee by the General Assembly pursuant to section 4-171, each agency shall submit to the office of the Secretary of the State a certified electronic copy of such regulation. Concomitantly, the agency shall electronically file with the electronic copy of the regulation a statement from the department head or a duly authorized deputy department head of such agency certifying that the electronic copy of the regulation is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170. Each regulation when so electronically submitted shall be in the form prescribed by the Secretary of the State for posting on the eRegulations System, and each section of the regulation shall include the appropriate regulation section number and a section heading. The Secretary of the State shall post each such regulation on the eRegulations System not later than ten calendar days after the agency submission of the regulation.

(b) Each regulation hereafter adopted is effective upon its posting on the eRegulations System by the Secretary of the State in accordance with this section, except that: (1) If a later date is required by statute or specified in the regulation, the later date is the effective date; (2) a regulation may not be effective before the effective date of the public act requiring or permitting the regulation; and (3) subject to applicable constitutional or statutory provisions, an emergency regulation becomes effective immediately upon electronic submission to the Secretary of the State, or at a stated date less than twenty days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefor shall be submitted with the regulation. The agency shall take appropriate measures to make emergency regulations known to the persons who may be affected by them.

(1971, P.A. 854, S. 7; P.A. 88-317, S. 7, 107; P.A. 12-92, S. 6; P.A. 13-247, S. 32; 13-274, S. 7; P.A. 14-187, S. 6.)

History: P.A. 88-317 added new Subsec. (b)(2), providing that a regulation may not be effective before effective date of act requiring or permitting the regulation, and made technical changes, effective July 1, 1989, and applicable to agency proceedings commencing on or after that date; P.A. 12-92 amended Subsec. (a) to replace provision re 2 certified copies with provision re a certified copy and an electronic copy, to require filing of agency statement certifying accuracy re electronic copy, to make technical changes, to delete provision re permanent register of regulations and to require online posting of regulations by the Secretary, amended Subsec. (b) to make regulations effective upon posting online rather than upon filing and to require agency to post emergency regulations online and deleted former Subsec. (c) re forwarding a copy for publication, effective July 1, 2013; P.A. 13-247 amended Subsec. (a) to make technical changes, to replace "certified copy and an electronic copy" with "certified electronic copy", to require certification be concomitant and electronic and to add reference to prescribing of form by the Secretary, and amended Subsecs. (a) and (b) to replace references to posting online with references to posting on eRegulations System, effective October 1, 2014, and applicable to regulations noticed on and after that date; P.A. 13-274 made identical changes as P.A. 13-247, effective October 1, 2014, and applicable to regulations noticed on and after that date; P.A. 14-187 amended Subsec. (a) to add reference to duly authorized deputy department head certification and to increase deadline for posting on system from 5 to 10 calendar days after submission and amended Subsec. (b) to delete reference to posting emergency regulations on eRegulations System, effective October 1, 2014, and applicable to regulations noticed on and after that date.

Cited. 165 C. 448; 171 C. 691; 172 C. 263; 173 C. 462; 177 C. 356; 183 C. 313; 186 C. 153; 187 C. 458; 191 C. 173; Id., 384; 239 C. 32.

Cited. 1 CA 1.

Cited. 34 CS 225.

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Sec. 4-173. Omission of certain regulations from eRegulations System. Link to electronic copy. Maintenance of copy for public inspection. The Secretary of the State may omit from the regulations of Connecticut state agencies posted on the eRegulations System (1) any regulation of a federal agency or a government agency of another state that is incorporated by reference into a Connecticut regulation, and (2) any regulation that is incorporated by reference into a Connecticut regulation and to which a third party holds the intellectual property rights. The Secretary of the State may post a link on the eRegulations System to an electronic copy of any document incorporated by reference, if available and not prohibited by any state or federal law, rule or regulation. Such link shall not be considered to be a part of the official compilation of the regulations of Connecticut state agencies. Each agency that incorporates a document by reference into a regulation shall maintain a copy of such document readily available for public inspection in the principal office of the agency, except for a regulation of a federal agency or a government agency of another state that is published by or otherwise available in printed or electronic form from such federal or government agency.

(1971, P.A. 854, S. 8; P.A. 76-297, S. 4; P.A. 80-471, S. 6; P.A. 83-277, S. 2, 3; P.A. 88-133; P.A. 05-288, S. 18; P.A. 12-92, S. 7; P.A. 13-247, S. 33; 13-274, S. 8; P.A. 14-187, S. 7.)

History: P.A. 76-297 deleted previous Subsec. (a) requiring publication of regulations and index by October 27, 1970, and relettered remaining Subsecs. accordingly, deleting provision for periodic publication of revised index by commission on official legal publications in current Subsec. (a) (formerly Subsec. (b)); P.A. 80-471 deleted reference to regulations adopted pursuant to Sec. 4-168(b) in Subsec. (b); P.A. 83-277 amended Subsec. (b) by allowing the publication of a correlated table of former and new section numbers for those regulations submitted with technical changes; P.A. 88-133 replaced exceptions to publication of regulations in Subsec. (c) with enumerated exceptions in Subsecs. (a) and (b), added a requirement in Subsecs. (a) and (b) for publication of notice of omitted regulations, inserted new Subsec. (c) requiring agencies to make regulations available for inspection and copying, added new Subsec. (e) requiring all regulations to be maintained in law libraries and made technical changes; P.A. 05-288 made technical changes in Subsecs. (a) and (b), effective July 13, 2005; P.A. 12-92 amended Subsec. (a) to delete provisions re Commission on Official Legal Publications publishing a compilation, add provisions re Secretary posting regulations online, delete reference to commercial publishing company in Subdiv. (1), delete former Subdivs. (2) and (3) re regulation too expensive or unduly cumbersome to publish, add new Subdiv. (2) re regulation incorporated by reference until licensing agreement is obtained and require that Secretary post web site links to incorporated or omitted regulations and that information be updated quarterly, deleted former Subsecs. (b) to (e) re publication by the commission in Connecticut Law Journal, public inspection of regulations, availability of published regulations at agencies and maintaining compilation in law libraries, and added new Subsec. (b) re online regulations being the official version and authorizing Secretary to adopt regulations, effective July 1, 2013; P.A. 13-247 replaced provisions re accessible and searchable online compilation of regulations with reference to eRegulations System, required Secretary, on and after October 1, 2014, to post notice of omitted regulation on system, deleted former Subsec. (b) re online compilation being official version and authorizing Secretary to adopt regulations re format of submitted regulations, and deleted Subsec. (a) designator, effective

July 1, 2013; P.A. 13-274 made identical changes as P.A. 13-247, effective July 1, 2013; P.A. 14-187 deleted reference to licensing agreement under Sec. 4-67q, deleted provision requiring posting of notice of omitted regulations on system, replaced mandatory provision re link to incorporated by reference regulations and quarterly updates with discretionary provision and specified link not part of official compilation, added requirement for agency to maintain copy of regulations for public inspection at principal office and made technical changes.

Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; 239 C. 32.

Cited. 1 CA 1; 25 CA 555.

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Sec. 4-173a. Posting of implemented policies and procedures online. Section 4-173a is repealed, effective June 19, 2013.

(P.A. 12-92, S. 11; P.A. 13-247, S. 388; 13-274, S. 12.)

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Sec. 4-173b. Establishment of eRegulations System. Certification by Secretary of the State. Official compilation. Plan to maintain paper copies. (a) The Secretary of the State shall establish and maintain the eRegulations System, which shall include a compilation of the regulations of Connecticut state agencies adopted by all state agencies subsequent to October 27, 1970. Such compilation may be a revision of the most current compilation published by the Commission on Official Legal Publications. The Commission on Official Legal Publications shall, within available appropriations, provide any assistance requested by the Secretary of the State in the creation of the eRegulations System. On and after the certification date the eRegulations System shall also include the official electronic regulation-making record described in section 4-168b. On and after the date the Secretary of the State certifies the eRegulations System as sufficient pursuant to this section, the regulations of Connecticut state agencies published by the Secretary on said system shall be the official compilation of the regulations of Connecticut state agencies for all purposes, including all legal and administrative proceedings. The Secretary of the State shall update the compilation of the regulations of Connecticut state agencies published on the eRegulations System at least monthly. The eRegulations System shall be easily accessible to and searchable by the public. The Secretary of the State may specify the format in which state agencies shall submit the final approved version of such regulations and all other documents required pursuant to this section and sections 4-167, 4-168, 4-170 and 4-172, and all state agencies shall follow the instructions of the Secretary of the State with respect to agency submissions to the Secretary. The Secretary of the State shall post on the eRegulations System all effective regulations of Connecticut state agencies as provided by the Commission on Official Legal Publications and any updates thereto. The Secretary of the State shall designate such posting as an unofficial version of the regulations of Connecticut state agencies until such time as the Secretary certifies in writing that the compilation of the regulations of Connecticut state agencies published on the eRegulations System is technologically sufficient to serve as the official compilation of the regulations of Connecticut state agencies and the electronic repository for the regulation-making record. Such certification shall be published on the Secretary's Internet web site and in the Connecticut Law Journal. Until such time as the Secretary makes such certification concerning the official compilation: (1) The Secretary, upon receipt of the certified electronic copy of an approved regulation in accordance with section 4-172, shall forward an electronic copy of such regulation to

the Commission on Official Legal Publications for publication in accordance with this section, (2) the Commission on Official Legal Publications shall continue to publish the regulations of Connecticut state agencies, and (3) such published version shall be the official version of said regulations.

(b) Each agency and quasi-public agency with regulatory authority shall post a conspicuous web site link to the eRegulations System on the agency's or quasi-public agency's Internet web site and shall, if practicable, link to the specific provisions of the regulations of Connecticut state agencies that concern the agency's or quasi-public agency's particular programs.

(c) Not later than January 1, 2014, the Secretary of the State shall develop and implement a plan to maintain a paper copy at the office of the Secretary of the State of all of the regulations of Connecticut state agencies posted on the eRegulations System.

(P.A. 13-247, S. 26; 13-274, S. 1; P.A. 14-187, S. 8.)

History: P.A. 13-247 and P.A. 13-274 effective July 1, 2013; P.A. 14-187 amended Subsec. (a) to make technical changes, add provision re compilation may be revision of most current published compilation, replace reference to October 1, 2014, with "certification date", add requirement for monthly updates to compilation, add reference to posting of updates by Secretary, replace reference to eRegulations System being technologically sufficient with reference to compilation being technologically sufficient, add reference to electronic repository for regulation-making record and delete requirement re certification to be made on or before October 1, 2014.

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Sec. 4-174. Petition for regulation. Any interested person may petition an agency requesting the promulgation, amendment, or repeal of a regulation. Each agency shall prescribe by regulation the form for petitions and the procedure for their submission, consideration, and disposition. Within thirty days after submission of a petition, the agency either shall deny the petition in writing stating its reasons for the denials or shall initiate regulation-making proceedings in accordance with section 4-168.

(1971, P.A. 854, S. 9.)

Cited. 169 C. 344; 171 C. 691; 172 C. 263; 173 C. 462; 179 C. 111; 186 C. 153; 191 C. 173; 239 C. 32.
Section not intended to grant right to petition for regulations to persons who have no specific, legally protectible interest that would be, or potentially could be, affected by the regulations. 278 C. 197.

Cited. 1 CA 1.

Cited. 32 CS 300.

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Sec. 4-175. Declaratory judgment action to determine validity of a regulation or applicability of a statute, regulation or final decision. (a) If a provision of the general statutes, a regulation or a final decision, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff and if an agency (1) does not take an action required by subdivision (1), (2) or (3) of subsection (e) of section 4-176, within sixty days of the filing of a petition for a declaratory ruling, (2) decides

not to issue a declaratory ruling under subdivision (4) or (5) of subsection (e) of said section 4-176, or (3) is deemed to have decided not to issue a declaratory ruling under subsection (i) of said section 4-176, the petitioner may seek in the Superior Court a declaratory judgment as to the validity of the regulation in question or the applicability of the provision of the general statutes, the regulation or the final decision in question to specified circumstances. The agency shall be made a party to the action.

(b) When the action for declaratory judgment concerns the applicability or validity of a regulation, the agency shall, within thirty days after service of the complaint, transmit to the court the original or a certified copy of the regulation-making record relating to the regulation. The court may order the agency to transcribe any portion of the regulation-making record that has not been transcribed and transmit to the court the original or a certified copy of the transcription. By stipulation of all parties, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(1971, P.A. 854, S. 10; P.A. 73-620, S. 7, 19; P.A. 76-436, S. 251, 681; P.A. 78-280, S. 5, 127; P.A. 88-230, S. 1, 12; 88-317, S. 9, 107.)

History: P.A. 73-620 included regulations and agency orders, deleting references to rules and changed basis for rendering declaratory judgments; P.A. 76-436 replaced court of common pleas with superior court, effective July 1, 1978; P.A. 78-280 replaced “Hartford county” with “the judicial district of Hartford-New Britain”; P.A. 88-230 proposed to replace reference to “judicial district of Hartford-New Britain” with “judicial district of Hartford” effective September 1, 1991, but said reference was deleted by P.A. 88-317; P.A. 88-317 designated former provisions as Subsec. (a), amended Subsec. (a) to allow action re applicability of provision of general statutes and to substantially revise agency action or inaction required before declaratory judgment may be sought and added Subsec. (b) re transmission of regulation-making record to court, effective July 1, 1989, and applicable to agency proceedings commencing on or after that date.

Jurisdiction under section which specifically provides for declaratory judgments under the Uniform Administrative Procedure Act depends on whether plaintiff’s rights or privileges have been threatened or impaired. 165 C. 448. Cited. 171 C. 691; 172 C. 263; 173 C. 352; 178 C. 586; 183 C. 76; 186 C. 153; 191 C. 173; 192 C. 460; 194 C. 165; 197 C. 554; 199 C. 609; 204 C. 67; 207 C. 346; 208 C. 663; 211 C. 436; 214 C. 256; 215 C. 616; 218 C. 335; 219 C. 520; 222 C. 414; 239 C. 32; Id., 124; Id., 599.

Cited. 1 CA 1; 6 CA 723; 17 CA 17; judgment reversed, see 212 C. 570; 34 CA 123. Court found no requirement that prisoner have a liberty interest before he can seek a determination as to validity of agency regulation that he claims interferes with or impairs or threatens to interfere with or impair his legal rights or privileges. 64 CA 258. Owner of land abutting property on which Department of Public Health recommended installation of a subsurface sewage disposal system does not have standing to challenge recommendation since no statute, regulation or decision applied to the facts. 65 CA 201.

Procedure to challenge regulation. 32 CS 153. Cited. 33 CS 86; 35 CS 13; 39 CS 99; Id., 462.

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Sec. 4-176. Declaratory rulings. Petitions. Regulations. (a) Any person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency.

(b) Each agency shall adopt regulations, in accordance with the provisions of this chapter, that provide for (1) the form and content of petitions for declaratory rulings, (2) the filing procedure for such petitions and (3) the procedural rights of persons with respect to the petitions.

(c) Within thirty days after receipt of a petition for a declaratory ruling, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and to all persons who have requested notice of declaratory ruling petitions on the subject matter of the petition.

(d) If the agency finds that a timely petition to become a party or to intervene has been filed according to the regulations adopted under subsection (b) of this section, the agency: (1) May grant a person status as a party if the agency finds that the petition states facts demonstrating that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency proceeding; and (2) may grant a person status as an intervenor if the agency finds that the petition states facts demonstrating that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings. The agency may define an intervenor's participation in the manner set forth in subsection (d) of section 4-177a.

(e) Within sixty days after receipt of a petition for a declaratory ruling, an agency in writing shall: (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

(f) A copy of all rulings issued and any actions taken under subsection (e) of this section shall be promptly delivered to the petitioner and other parties personally or by United States mail, certified or registered, postage prepaid, return receipt requested.

(g) If the agency conducts a hearing in a proceeding for a declaratory ruling, the provisions of subsection (b) of section 4-177c, section 4-178 and section 4-179 shall apply to the hearing.

(h) A declaratory ruling shall be effective when personally delivered or mailed or on such later date specified by the agency in the ruling, shall have the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of section 4-183. A declaratory ruling shall contain the names of all parties to the proceeding, the particular facts on which it is based and the reasons for its conclusion.

(i) If an agency does not issue a declaratory ruling within one hundred eighty days after the filing of a petition therefor, or within such longer period as may be agreed by the parties, the agency shall be deemed to have decided not to issue such ruling.

(j) The agency shall keep a record of the proceeding as provided in section 4-177.

(1971, P.A. 854, S. 11; P.A. 73-620, S. 8, 19; P.A. 82-349, S. 3, 4; 82-472, S. 178, 183; P.A. 88-317, S. 10, 107.)

History: P.A. 73-620 made issuance of declaratory rulings discretionary and made provision for procedure if agency fails to issue ruling if requested to do so; P.A. 82-349 added provision re appeals pursuant to Secs. 4-175 and 4-183; P.A. 82-472 made a technical change, replacing appeal with remedy consisting of action for declaratory judgment; P.A. 88-317 substituted new provisions for the entire former section, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Cited. 169 C. 344; 171 C. 691; 172 C. 263; 173 C. 352; 177 C. 356; 178 C. 586; 183 C. 67; Id., 76; 186 C. 153; 191 C. 173; 192 C. 460; 194 C. 165; 197 C. 91; Id., 554; 199 C. 609; 200 C. 133; 203 C. 295; 204 C. 137; 208 C. 663; Id., 709; 210 C. 349; Id., 531; 213 C. 184; 214 C. 256; Id., 726; 215 C. 616; 216 C. 253; 217 C. 130; 218 C. 335; 221 C. 422; 222 C. 414; 223 C. 450; 226 C. 792; 227 C. 545; 234 C. 424; 236 C. 681; 239 C. 32; Id., 124; Id., 599. The expansive right to petition for a declaratory ruling under section does not confer an automatic right to appeal under Sec. 4-183 which requires that the person appealing demonstrate aggrievement. 286 C. 698. A letter, that meets all of the characteristics of a request for a declaratory ruling, to a state agency by a person seeking a determination re the applicability of a statute to specific facts, may be treated as a petition for a declaratory ruling even if the author of the letter does not expressly invoke section; state agency's letter in response constituted a declaratory ruling; under the circumstances, declaratory judgment action may be treated as an administrative appeal under Sec. 4-183. 307 C. 470. Expansive right for any person to seek a declaratory ruling, and subsequent denial of the request, do not confer a right to appeal under Sec. 4-183 without pleading sufficient facts to show aggrievement. 312 C. 265.

Cited. 1 CA 1; 2 CA 68; 4 CA 117; 5 CA 253; 6 CA 723; 17 CA 17; judgment reversed, see 212 C. 570; 21 CA 629; Id., 678; 31 CA 400; judgment reversed, see 230 C. 459; 34 CA 123; 37 CA 653; judgment reversed, see 238 C. 361; 41 CA 827; 42 CA 631; 43 CA 133; 45 CA 83. In order to constitute a petition for declaratory judgment, plaintiff's e-mail correspondence with department needed to set forth specific circumstances and seek to have department apply a regulation, statute or final decision, on a matter in its jurisdiction, to those specific circumstances. 128 CA 777.

Challenge to regulation should begin with petition under section; adverse ruling is appealable under Sec. 4-183 and failure to issue ruling permits action under Sec. 4-175. 32 CS 153. Cited. 33 CS 86; 39 CS 99; Id., 462; 40 CS 381; 44 CS 1.

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Secs. 4-176a to 4-176d. Reserved for future use.

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Sec. 4-176e. Agency hearings. Except as otherwise required by the general statutes, a hearing in an agency proceeding may be held before (1) one or more hearing officers, provided no individual who has personally carried out the function of an investigator in a contested case may serve as a hearing officer in that case, or (2) one or more of the members of the agency.

(P.A. 88-317, S. 11, 107.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Cited. 217 C. 130; 226 C. 105; 239 C. 32.

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Sec. 4-177. Contested cases. Notice. Record. (a) In a contested case, all parties shall be afforded an

opportunity for hearing after reasonable notice.

(b) The notice shall be in writing and shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(c) Unless precluded by law, a contested case may be resolved by stipulation, agreed settlement, or consent order or by the default of a party.

(d) The record in a contested case shall include: (1) Written notices related to the case; (2) all petitions, pleadings, motions and intermediate rulings; (3) evidence received or considered; (4) questions and offers of proof, objections and rulings thereon; (5) the official transcript, if any, of proceedings relating to the case, or, if not transcribed, any recording or stenographic record of the proceedings; (6) proposed final decisions and exceptions thereto; and (7) the final decision.

(e) Any recording or stenographic record of the proceedings shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript. Nothing in this section shall relieve an agency of its responsibility under section 4-183 to transcribe the record for an appeal.

(1971, P.A. 854, S. 12; P.A. 73-620, S. 9, 10, 19; P.A. 88-317, S. 12, 107.)

History: P.A. 73-620 amended Subsec. (e) omitting statement of matters officially noticed, proposed findings and exceptions and staff memoranda or data submitted to hearing officer or agency members from record of contested case and amended Subsec. (f) to require party requesting transcript to pay its cost; P.A. 88-317 amended Subsec. (b) to require notice to be in writing, transferred provisions of former Subsec. (c) re opportunity to parties to respond and present evidence and argument to Sec. 4-177c, relettered former Subsec. (d) to Subsec. (c) and rephrased provisions of the subsection, relettered former Subsec. (e) to Subsec. (d) and amended Subsec. (e) to require notices, petitions, official transcript and proposed final decisions and exceptions and final decisions to be included in contested case record, relettered former Subsec. (f) to Subsec. (e) and amended Subsec. (e) by substituting "Any recording or stenographic record of the proceedings" for "Oral proceedings or any part thereof" and adding provision re agency responsibility to transcribe the record for an appeal, and transferred provisions of former Subsec. (g), which required findings of fact to be based exclusively on the evidence and on matters officially noticed, to Sec. 4-180, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Notice of hearing under Sec. 10-151(b) which did not include two of the charges against the teacher held insufficient; findings of fact must be based on matters "officially noticed" as well as on the evidence. 167 C. 368. Cited. 171 C. 691; 172 C. 263; 173 C. 462; 176 C. 82; Id., 191; 177 C. 78; 183 C. 128; 186 C. 153; 188 C. 90; 191 C. 173; 207 C. 77; Id., 296; 208 C. 442; 210 C. 531; 211 C. 508; 213 C. 184; 214 C. 726; 215 C. 474; Id., 616; 223 C. 618; 228 C. 651; 239 C. 32.

Cited. 1 CA 1; 4 CA 117, 121; 9 CA 622; 33 CA 727; 34 CA 123; 37 CA 653; judgment reversed, see 238 C. 361. Notification by letter from complainant that requested information has been received, which was the same manner in which complainant initially notified commission of the contested case, constitutes a formal withdrawal of the complaint and therefore terminates commission's jurisdiction over the issue. 103 CA 571.

Administrative adjudication of no refund, not contested case. 30 CS 118. Cited. Id., 120; 34 CS 225; 39 CS

99; Id., 462; 41 CS 211; 42 CS 1; Id., 599.

Subsec. (b):

Subdiv. (4): Notice which failed to include several charges in “matters asserted” was prejudicial violation of Subsec. 167 C. 368. Cited. 174 C. 366. Subdiv. (2): Notice of hearing deemed legally sufficient where it cited statutory authorities of jurisdiction and under which violations claimed. 177 C. 515. Cited. 200 C. 489; 220 C. 86; 232 C. 57.

Cited. 22 CA 181; 41 CA 866.

Cited. 40 CS 226; 43 CS 340.

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Sec. 4-177a. Contested cases. Party, intervenor status. (a) The presiding officer shall grant a person status as a party in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner’s legal rights, duties or privileges shall be specifically affected by the agency’s decision in the contested case.

(b) The presiding officer may grant any person status as an intervenor in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner’s participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(c) The five-day requirement in subsections (a) and (b) of this section may be waived at any time before or after commencement of the hearing by the presiding officer on a showing of good cause.

(d) If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor’s participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor’s rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

(P.A. 88-317, S. 20, 107.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Cited. 233 C. 486; 234 C. 624; 239 C. 32.

Cited. 30 CA 85; 35 CA 455; 37 CA 653; judgment reversed, see 238 C. 361.

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Sec. 4-177b. Contested cases. Presiding officer. Subpoenas and production of documents. In a contested case, the presiding officer may administer oaths, take testimony under oath relative to the case, subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in the case. If any person disobeys the subpoena or, having appeared, refuses to answer any question put to him or to produce any records, physical evidence, papers and documents requested by the presiding officer, the agency may apply to the superior court for the judicial district of Hartford or for the judicial district in which the person resides, or to any judge of that court if it is not in session, setting forth the disobedience to the subpoena or refusal to answer or produce, and the court or judge shall cite the person to appear before the court or judge to show cause why the records, physical evidence, papers and documents should not be produced or why a question put to him should not be answered. Nothing in this section shall be construed to limit the authority of the agency or any party as otherwise allowed by law.

(P.A. 88-230, S. 1, 12; 88-317, S. 15, 107; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6.)

History: P.A. 88-230 required substitution of “judicial district of Hartford” for “judicial district of Hartford-New Britain”, effective September 1, 1991; P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995.

Cited. 239 C. 32.

Cited. 37 CA 653; judgment reversed, see 238 C. 361.

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Sec. 4-177c. Contested cases. Documents. Evidence. Arguments. Statements. (a) In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved.

(b) Persons not named as parties or intervenors may, in the discretion of the presiding officer, be given an opportunity to present oral or written statements. The presiding officer may require any such statement to be given under oath or affirmation.

(P.A. 88-317, S. 13, 107; P.A. 89-174, S. 1, 7.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 89-174 divided Subsec. (a) into Subdivs. and, in Subdiv. (1), added “except as otherwise provided by federal law or any other provision of the general statutes” and amended Subsec. (b) to allow, instead of require, presiding officer to require statements under Subsec. (b) to be given under oath or affirmation and to delete sentence re procedure for presiding officer to follow if he proposes to consider such statements as evidence.

Cited. 223 C. 618; 226 C. 105; 239 C. 32.

Cited. 37 CA 653; judgment reversed, see 238 C. 361.

Cited. 44 CS 21.

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Sec. 4-178. Contested cases. Evidence. In contested cases: (1) Any oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence; (2) agencies shall give effect to the rules of privilege recognized by law; (3) 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; (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency conducting the proceeding shall be given an opportunity to compare the copy with the original; (5) a party and such agency may conduct cross-examinations required for a full and true disclosure of the facts; (6) notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge; (7) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and (8) the agency's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

(1971, P.A. 854, S. 13; P.A. 73-620, S. 11, 19; P.A. 88-317, S. 14, 107.)

History: P.A. 73-620 deleted former provisions regarding rules of evidence and objections to evidentiary offers, replacing them with allowance for any oral or documentary evidence; P.A. 88-317 made minor and technical changes and renumbered the subdivisions, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Evidence concerning charges not included in notice to teacher re hearing under Sec. 10-151(b) is irrelevant. 167 C. 368. Having decided to proceed without counsel, plaintiff cannot claim he was prejudiced by admission of evidence to which he did not object. 168 C. 94. Cited. Id., 435; 170 C. 141; 171 C. 691; Id., 705; 172 C. 263; 173 C. 462; 177 C. 78; Id., 344; 183 C. 128; 186 C. 153; 191 C. 173; 211 C. 508; 215 C. 474; Id., 616; 216 C. 627; 218 C. 256; 220 C. 86; 223 C. 618; 226 C. 105; 228 C. 651; 231 C. 602; 237 C. 209; 239 C. 32.

Cited. 1 CA 1; 4 CA 307; Id., 359; 9 CA 622; 10 CA 90; 22 CA 181, 189; Id., 193; 24 CA 662; judgment reversed, see 223 C. 618; 27 CA 346; 33 CA 727; 34 CA 123; 37 CA 653; judgment reversed, see 238 C. 361. Subdiv. (8): Although parties are entitled to notice of any nonrecord facts that will constitute proof in a case, the composition of an administrative board, as well as statute, put plaintiff on notice that the board would use its own expertise when determining whether plaintiff's alleged acts conformed to the standard of care. 60 CA 775.

Subdiv. (4): Notice requirements are to protect parties from surprising and unexpected material or evidence; previous findings of Insurance Commissioner in same matter not prejudicial. 32 CS 257. Cited. 34 CS 225; 36 CS 18; 39 CS 99; Id., 462; 42 CS 1; Id., 413; Id., 602; 44 CS 21. Subdiv. (1): Hearsay evidence may be admitted as long as it is reliable and probative. 47 CS 228.

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Sec. 4-178a. Contested cases and declaratory ruling proceedings. Review of preliminary, procedural or evidentiary rulings. If a hearing in a contested case or in a declaratory ruling proceeding is held before a hearing officer or before less than a majority of the members of the agency who are authorized by law to render a final decision, a party, if permitted by regulation and before rendition of the final decision, may request a review by a majority of the members of the agency, of any preliminary, procedural or evidentiary ruling made at the hearing. The majority of the members may make an appropriate order, including the reconvening of the hearing.

(P.A. 88-317, S. 22, 107.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Cited. 217 C. 130; 239 C. 32.

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Sec. 4-179. Agency proceedings. Proposed final decision. (a) When, in an agency proceeding, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its findings.

(c) Except when authorized by law to render a final decision for an agency, a hearing officer shall, after hearing a matter, make a proposed final decision.

(d) The parties and the agency conducting the proceeding, by written stipulation, may waive compliance with this section.

(1971, P.A. 854, S. 14; P.A. 88-317, S. 16, 107; P.A. 13-279, S. 1.)

History: P.A. 88-317 divided former section into Subsecs. (a) and (d), amended Subsec. (a) to apply to agency proceedings instead of contested cases only, to substitute "members" for "officials" and "matter" for "case" and to clarify references to "decision", added Subsec. (b) clarifying and rephrasing former provisions, added Subsec. (c) re proposed final decision by hearing officer, and amended Subsec. (d) by inserting "and the agency conducting the proceeding", effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 13-279 amended Subsec. (b) by adding ", including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its findings".

Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; 207 C. 346; 219 C. 168; 220 C. 86; 228 C. 651; 231 C. 308; 233 C. 296; 234 C. 312; 239 C. 32.

Cited. 1 CA 1; 9 CA 622; 15 CA 205; 34 CA 343; 45 CA 476. Plaintiffs' failure to file exceptions or present

oral argument pursuant to section was not tantamount to failing to challenge the proposed decision and thus plaintiffs were not barred from raising their claims on appeal. 144 CA 337.

Cited. 42 CS 413; 43 CS 457.

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Sec. 4-180. Contested cases. Final decision. Application to court upon agency failure. (a) Each agency shall proceed with reasonable dispatch to conclude any matter pending before it and, in all contested cases, shall render a final decision within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later, in such proceedings.

(b) If any agency fails to comply with the provisions of subsection (a) of this section in any contested case, any party thereto may apply to the superior court for the judicial district of Hartford for an order requiring the agency to render a final decision forthwith. The court, after hearing, shall issue an appropriate order.

(c) A final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed. The agency shall state in the final decision the name of each party and the most recent mailing address, provided to the agency, of the party or his authorized representative. The final decision shall be delivered promptly to each party or his authorized representative, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. The final decision shall be effective when personally delivered or mailed or on a later date specified by the agency.

(1971, P.A. 854, S. 15; P.A. 73-620, S. 17, 19; P.A. 75-529, S. 3, 4; P.A. 77-452, S. 46, 72; P.A. 78-280, S. 5, 127; P.A. 79-631, S. 23, 111; P.A. 88-230, S. 1, 12; 88-317, S. 17, 107; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 13-279, S. 2.)

History: P.A. 73-620 deleted detailed provisions for contents of final decision or order concerning findings of fact and conclusions of law; P.A. 75-529 added Subsecs. (a) and (b) and made former provisions Subsec. (c); P.A. 77-452 replaced court of common pleas with superior court, effective July 1, 1978; P.A. 78-280 replaced "Hartford county" with "the judicial district of Hartford-New Britain"; P.A. 79-631 made technical changes; P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 88-317 amended Subsec. (a) by inserting "or the due date for the" and " , whichever is later", amended Subsec. (b) by repealing provisions allowing any interested person to apply to superior court and repealing exception to requirement for court order if agency establishes to satisfaction of the court reasonable cause for failure to comply with Subsec. (a) and substantially amended Subsec. (c) re form, content, basis, delivery and effective date of final decisions in contested cases, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 13-279 amended Subsec. (c) by adding " , including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision".

Failure to comply with former section requirements in sending plaintiff notice of final decision did not render

defendant's action void. 168 C. 94. Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; Id., 384; 204 C. 60; 207 C. 683; 210 C. 597; 220 C. 86; 228 C. 651; 232 C. 57; 233 C. 296; 234 C. 312; 239 C. 32.

Cited. 1 CA 1; 2 CA 689; 9 CA 622.

Cited. 43 CS 340; Id., 386; Id., 457; 44 CS 90.

Subsec. (c):

Cited. 205 C. 324. Oral decision of an agency discussed. 232 C. 181. Cited. 237 C. 209; 239 C. 437.

Cited. 37 CA 777.

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Sec. 4-180a. Indexing of written orders and final decisions. (a) In addition to other requirements imposed by any provision of law, each agency shall index, by name and subject, all written orders and final decisions rendered on or after October 1, 1989, and shall make them available for public inspection and copying, to the extent required by the Freedom of Information Act, as defined in section 1-200.

(b) No written order or final decision may be relied on as precedent by an agency until it has been made available for public inspection and copying. On and after October 1, 1989, no written order or final decision, regardless of when rendered, may be relied on as precedent by an agency unless it also has been indexed by name and subject.

(P.A. 88-317, S. 18, 107; P.A. 89-174, S. 2, 7; P.A. 97-47, S. 27.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 89-174 amended Subsec. (a) by requiring indexing of only orders and decisions "rendered on or after October 1, 1989" and, in Subsec. (b), added "regardless of when rendered" and made a technical change; P.A. 97-47 amended Subsec. (a) by substituting "the Freedom of Information Act, as defined in Sec. 1-18a" for "chapter 3".

Cited. 233 C. 486; 239 C. 32.

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Sec. 4-181. Contested cases. Communications by or to hearing officers and members of an agency. (a) Unless required for the disposition of ex parte matters authorized by law, no hearing officer or member of an agency who, in a contested case, is to render a final decision or to make a proposed final decision shall communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or, in connection with any issue of law, with any party or the party's representative, without notice and opportunity for all parties to participate.

(b) Notwithstanding the provisions of subsection (a) of this section, a member of a multimember agency may communicate with other members of the agency regarding a matter pending before the agency, and members of the agency or a hearing officer may receive the aid and advice of members, employees, or agents of the

agency if those members, employees, or agents have not received communications prohibited by subsection (a) of this section.

(c) Unless required for the disposition of ex parte matters authorized by law, no party or intervenor in a contested case, no other agency, and no person who has a direct or indirect interest in the outcome of the case, shall communicate, directly or indirectly, in connection with any issue in that case, with a hearing officer or any member of the agency, or with any employee or agent of the agency assigned to assist the hearing officer or members of the agency in such case, without notice and opportunity for all parties to participate in the communication.

(d) The provisions of this section apply from the date the matter pending before the agency becomes a contested case to and including the effective date of the final decision. Except as may be otherwise provided by regulation, each contested case shall be deemed to have commenced on the date designated by the agency for that case, but in no event later than the date of hearing.

(1971, P.A. 854, S. 16; P.A. 88-317, S. 19, 107; P.A. 89-174, S. 3, 7.)

History: P.A. 88-317 designated former section as Subsec. (a) and amended Subsec. (a) to apply restriction on communications to a "hearing officer or member of any agency" instead of to "members or employees of an agency", to insert "final", to substitute "proposed final decision" for "findings of fact and conclusions of law in a contested case", and to make technical changes, deleted provision authorizing agency members to communicate with each other and to have the aid and advice of personal assistants and substituted new Subsec. (b) re communications among members of multimember agency and receipt of aid and advice by members of an agency or a hearing officer and added new Subsec. (c) re communications involving parties, intervenors, other agencies and persons having an interest in the outcome and new Subsec. (d) re period when section applicable, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 89-174 deleted provision in Subsec. (b) which had required agency to disclose in case record identity of employees or agents communicating with an agency member or a hearing officer.

Cited. 168 C. 435; 171 C. 691; 172 C. 263; 173 C. 462; 183 C. 128; 186 C. 153; 191 C. 173. Once violation of statute proved by party seeking relief, burden shifts to agency to prove no prejudice resulted from prohibited ex parte communication; waiver of claim to disqualification discussed. 202 C. 453. Where record shows prima facie violation of section, burden shifted to agency to prove no resulting prejudice. 207 C. 296. Cited. 212 C. 471; 215 C. 49; 226 C. 105; 239 C. 32.

Cited. 1 CA 1. To be entitled to relief, plaintiff must show prejudice to his rights resulting from an ex parte communication in violation of statute. 4 CA 143. Cited. 9 CA 622; 27 CA 495; judgment reversed, see 225 C. 499; 36 CA 587; 37 CA 777; 43 CA 512; 44 CA 622. Investigator's report cannot be construed as ex parte communication where other party has notice of report and opportunity to participate in presentation of allegations to the fact finder. 47 CA 325. Plaintiff was deprived of due process of law when commissioner engaged in ex parte communications with plaintiff's former attorney and issued unilateral order awarding attorney's fees without providing plaintiff with notice or opportunity to present evidence. *Id.*, 391.

Subsec. (b):

Cited. 37 CA 653; judgment reversed, see 238 C. 361. It was not improper for zoning commission to consider memorandum after close of public hearing because it was sent from one commission member to another concerning commission's deliberations and contained a summary of the member's opinion. 112 CA 484.

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Sec. 4-181a. Contested cases. Reconsideration. Modification. (a)(1) Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition.

(2) Within forty days of the personal delivery or mailing of the final decision, the agency, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.

(3) If the agency decides to reconsider a final decision, pursuant to subdivision (1) or (2) of this subsection, the agency shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision, provided such decision made after reconsideration shall be rendered not later than ninety days following the date on which the agency decides to reconsider the final decision. If the agency fails to render such decision made after reconsideration within such ninety-day period, the original final decision shall remain the final decision in the contested case for purposes of any appeal under the provisions of section 4-183.

(4) Except as otherwise provided in subdivision (3) of this subsection, an agency decision made after reconsideration pursuant to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, including, but not limited to, an appeal of (A) any issue decided by the agency in its original final decision that was not the subject of any petition for reconsideration or the agency's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by the agency from the determination of such issue in the original final decision.

(b) On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.

(c) The agency may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal that modification under the provisions of section 4-183 or, if an appeal is pending when the modification is made, may amend the appeal.

(P.A. 88-317, S. 21, 107; P.A. 89-174, S. 4, 7; P.A. 06-32, S. 1.)

History: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 89-174 renumbered Subdivs. in Subsec. (a) to add Subdiv. (2) authorizing agency to reconsider final decision on its own initiative, amended Subsec. (b) by substituting "final decision" for "order" and made minor changes in wording throughout section; P.A. 06-32 amended Subsec. (a) by inserting provisions in

Subdiv. (3) re ninety-day period for rendering a decision made after reconsideration and adding Subdiv. (4) re decision made after reconsideration to become the final decision for purposes of appeal.

Cited. 232 C. 181; 234 C. 411; 235 C. 128; 238 C. 361; 239 C. 32. Agency decision that is subject to motion for reconsideration is not a final decision from which appeal may be taken even if party appealing decision is not aggrieved by portion of agency decision that is subject of motion for reconsideration. 311 C. 259.

Cited. 30 CA 738. Failure to file petition for reconsideration in timely manner resulted in dismissal of plaintiff's appeal for lack of subject matter jurisdiction. 61 CA 137.

Subsec. (a):

Cited. 37 CA 653; judgment reversed, see 238 C. 361. Commissioner's decision denying plaintiff's petition for reconsideration does not fit within definition of "contested case" because it is not a final decision. 61 CA 137.

Subsec. (b):

Cited. 227 C. 545; 236 C. 722. Proceeding on plaintiff's motions under section did not give rise to a contested case within meaning of Uniform Administrative Procedure Act; therefore denial of plaintiff's motions was not appealable to the Superior Court; judgment of Appellate Court in 37 CA 653 reversed. 238 C. 361.

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Sec. 4-182. Matters involving licenses. (a) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action and the specific provisions of the general statutes or of regulations adopted by the agency that authorize such intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

(d) (1) When an agency is authorized under the general statutes to issue a license, but is not specifically authorized to revoke or suspend such license, the agency may: (A) Revoke or suspend such license in accordance with the provisions of subsection (c) of this section; or (B) (i) adopt regulations, in accordance with the provisions of chapter 54, that provide a procedure for the revocation or suspension of such license consistent with the requirements of said subsection (c), and (ii) revoke or suspend such license in accordance with such regulations.

(2) Nothing in this subsection shall be construed to affect (A) the validity of any regulation adopted in accordance with this chapter and effective on or before October 1, 1999, or (B) any contested case in which a notice under section 4-177 is issued on or before October 1, 1999.

(1971, P.A. 854, S. 17; P.A. 99-90, S. 1; P.A. 13-279, S. 3.)

History: P.A. 99-90 added Subsec. (d) re agency authorization to revoke or suspend a license; P.A. 13-279 amended Subsec. (c) by adding “and the specific provisions of the general statutes or of regulations adopted by the agency that authorize such intended action”.

Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; 207 C. 77; Id., 698; 211 C. 508; 213 C. 184; 239 C. 32.

Cited. 1 CA 1; 9 CA 622; 27 CA 495; judgment reversed, see 225 C. 499.

Cited. 40 CS 226.

Subsec. (c):

Cited. 207 C. 698; 214 C. 560; 220 C. 86; 223 C. 618; 235 C. 128. Since phrase “institution of agency proceedings” means the institution of a particular action at law or case in litigation and “proceeding” encompasses a broader category of events than that encompassed by a hearing or final decision, Department of Public Utility Control instituted proceedings against plaintiff when it issued the letter to plaintiff informing it of its initiation of the new investigation; grounds for revocation of license must be more than self-evident to the licensee, thus Department of Public Utility Control’s letter to licensee which merely advised that department had initiated an investigation into whether it should revoke licensee’s certificate of public convenience and necessity, stated certain departmental procedural practices and indicated that licensee was designated as a party to the proceeding without reference to the basis underlying initiation of the proceeding did not satisfy statutory requirements because the letter commenced revocation proceedings and could not have provided licensee with notice and opportunity to show compliance prior to institution of the proceeding; “opportunity to show compliance” provision represents a “second chance” doctrine which allows licensee opportunity to put its house in lawful order before more formal agency proceedings are undertaken; court did not interpret Subsec. as requiring a hearing or opportunity for a hearing prior to revocation of license or as component of the “opportunity to show compliance” provision. 270 C. 778.

Cited. 14 CA 552; 24 CA 662; judgment reversed, see 223 C. 618; 34 CA 343; 37 CA 777. Where plaintiff had been given ample notice of charges against him and had a sufficient opportunity to be heard, failure of state electrical work examining board to hold a compliance hearing prior to license revocation did not deprive plaintiff of his statutory or constitutional rights. 104 CA 655.

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Sec. 4-183. Appeal to Superior Court. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.

(b) A person may appeal a preliminary, procedural or intermediate agency action or ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling and (2) postponement of the appeal would result in an inadequate remedy.

(c) (1) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision (3) of subsection (a) of section 4-181a if the agency decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, whichever is applicable and is later, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. Within that time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days on parties other than the agency that rendered the final decision shall not deprive the court of jurisdiction over the appeal. Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or by personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail.

(d) The person appealing, not later than fifteen days after filing the appeal, shall file or cause to be filed with the clerk of the court an affidavit, or the state marshal's return, stating the date and manner in which a copy of the appeal was served on each party and on the agency that rendered the final decision, and, if service was not made on a party, the reason for failure to make service. If the failure to make service causes prejudice to any party to the appeal or to the agency, the court, after hearing, may dismiss the appeal.

(e) If service has not been made on a party, the court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify each party not yet served.

(f) The filing of an appeal shall not, of itself, stay enforcement of an agency decision. An application for a stay may be made to the agency, to the court or to both. Filing of an application with the agency shall not preclude action by the court. A stay, if granted, shall be on appropriate terms.

(g) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the agency shall transcribe any portion of the record that has not been transcribed and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding appealed from, which shall include the agency's findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(i) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the agency are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

(k) If a particular agency action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the agency decision, orders the particular agency action, or orders the agency to take such action as may be necessary to effect the particular action.

(l) In all appeals taken under this section, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that costs are allowed in judgments rendered by the Superior Court. No costs shall be taxed against the state, except as provided in section 4-184a.

(m) In any case in which a person appealing claims that he cannot pay the costs of an appeal under this section, he shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such fees, costs and necessary expenses, including the requirements of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render its judgment on the application, which judgment shall contain a statement of the facts the court has found, with its conclusions thereon. The filing of the application for the waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered.

(1971, P.A. 854, S. 18; P.A. 73-620, S. 12-14, 18, 19; P.A. 76-436, S. 252, 681; P.A. 77-603, S. 1, 125; P.A. 78-280, S. 10, 127; P.A. 79-163; P.A. 84-43, S. 1; P.A. 88-230, S. 1, 12; 88-317, S. 23, 107; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 99-39; 99-215, S. 24, 29; P.A. 00-99, S. 20, 154; P.A. 06-32, S. 2.)

History: P.A. 73-620 added proviso that in conflict between state and federal statutes or regulations, federal provisions prevail, required that record contain findings of fact and conclusions of law changed place for filing petition from Hartford county court of common pleas to court where aggrieved person resides and added Subsec. (h) re waiver of fees; P.A. 76-436 replaced court of common pleas with superior court and included judicial districts, effective July 1, 1978; P.A. 77-603 allowed party to file petition in Hartford county in certain instances, inserted new Subsec. (h) re costs and relettered former Subsec. (h) as Subsec. (i); P.A. 78-280 deleted references to court of common pleas and counties and replaced reference to Hartford county with "the judicial district of Hartford-New Britain"; P.A. 79-163 changed time for filing petition from 30 to 45 days after decision and provided for notifying agency of appeal; P.A. 84-43 amended Subsec. (b) by providing that if a rehearing is requested the time periods for filing a petition and serving copies of the petition runs from the "mailing of the notice" of the decision, and by providing that service may be made upon an agency by mail "without the use of a sheriff or other officer"; P.A. 88-230 replaced "judicial district of Hartford-New

Britain” with “judicial district of Hartford”, effective September 1, 1991; P.A. 88-317 substantially amended the section, repealing, adding, rephrasing and reordering provisions, adding new subsections and relettering existing subsections, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 99-39 amended Subsec. (c) by clarifying that service of appeal by mail is effective upon depositing appeal in mail; P.A. 99-215 replaced “judicial district of Hartford” with “judicial district of New Britain” in Subsec. (c), effective June 29, 1999; P.A. 00-99 changed reference to sheriff to state marshal in Subsecs. (c) and (d), effective December 1, 2000; P.A. 06-32 amended Subsec. (c) by designating existing provision re 45-day period after mailing or personal delivery of the final decision as new Subdiv. (1), adding new Subdivs. (2) to (4) re time periods applicable in the case of reconsideration of the final decision, specifying “whichever is applicable and is later” and deleting former subdiv. designators.

Cited. 168 C. 413; Id., 435; 171 C. 345; Id., 691; 172 C. 263. Applies to appeals from decisions of claims commission when not precluded by Sec. 4-164(b). Id., 603. Cited. 173 C. 352. To qualify under section for an appeal to the courts from final appeal of an administrative agency, one must demonstrate he is aggrieved by the decision, that he has a personal and legal interest in the subject matter and that such interest has been specially and adversely affected by the decision. Id., 384. Cited. Id., 462, 465, 467, 469; 176 C. 1; Id., 191; Id., 533; 177 C. 584; Id., 599; Id., 610; Id., 623; 179 C. 111; Id., 415; Id., 694; 183 C. 76; Id., 128; 184 C. 75; 186 C. 153; Id., 198; 188 C. 44. Exceptions to doctrine of exhaustion of administrative remedies discussed. Id., 90. Cited. Id., 152; 191 C. 173; Id., 384. An agency decision to reject a bid or to award a contract has none of the attributes of a formal hearing, nor is a formal hearing required by law; for this reason, the agency’s decision does not involve a contested case and the disappointed bidder cannot assert standing under statute. Id., 497. Cited. 192 C. 234; 193 C. 379; 194 C. 677; 195 C. 534; Id., 543; 196 C. 451; 197 C. 320; 198 C. 445; 200 C. 261; 203 C. 295; 204 C. 17; Id., 67; Id., 259; Id., 609; Id., 672; 205 C. 116; Id., 767; 206 C. 636; 207 C. 296. Exhaustion doctrine discussed. Id., 346. Cited. Id., 547; Id., 674; Id., 683; 208 C. 187; Id., 663; Id., 709; 209 C. 544; 210 C. 531; Id., 549; Id., 646; Id., 697; 211 C. 436; Id., 464; Id., 508; Id., 690; 212 C. 157; Id., 415; 213 C. 126; Id., 184; Id., 216; 214 C. 601; 215 C. 49; Id., 517; Id., 616; Id., 701; 216 C. 228; Id., 237; Id., 627; 217 C. 193; 218 C. 335; Id., 729; 219 C. 168; 220 C. 86; Id., 192; Id., 516; 221 C. 217; Id., 422; Id., 482; 222 C. 414; Id., 541; Id., 621; 224 C. 666; 225 C. 13; Id., 297; 226 C. 80; Id., 105; Id., 358; Id., 818; 227 C. 545; Id., 848; 228 C. 271; 229 C. 51; Id., 664; 230 C. 441; 231 C. 391; 232 C. 181; Id., 401; 233 C. 370; 234 C. 424; Id., 624; 235 C. 334; 236 C. 681; Id., 722; 237 C. 272; 238 C. 337; 239 C. 32; Id., 124; Id., 638; 240 C. 1; 241 C. 282. Denial of petition to intervene pursuant to Sec. 22a-19 was not a final decision within meaning of statute because it is not the agency determination in a contested case because, in turn, it does not determine the legal rights, duties or privileges of a party and instead, it is more properly considered as a preliminary or intermediate ruling of the agency. 259 C. 131. Agency decision that is subject to motion for reconsideration is not a final decision from which appeal may be taken even if party appealing decision is not aggrieved by portion of agency decision that is subject of motion for reconsideration. 311 C. 259. Expansive right for any person to seek a declaratory ruling under Sec. 4-176, and subsequent denial of the request, do not confer a right to appeal under this section without pleading sufficient facts to show aggrievement. 312 C. 265.

Cited. 1 CA 1; 2 CA 68; 3 CA 97; Id., 484; Id., 707; 4 CA 143; Id., 216; 5 CA 219; 6 CA 47; Id., 473; 7 CA 748; 12 CA 47; Id., 455; 13 CA 1; Id., 315; Id., 818; 14 CA 413; 17 CA 165; Id., 429; 18 CA 4; Id., 13; Id., 40; Id., 291; 19 CA 360; Id., 428; Id., 713; 21 CA 678; 23 CA 188; Id., 435; 24 CA 44; Id., 163; 25 CA 543; judgment reversed, see 222 C. 541; 27 CA 377; Id., 590; 28 CA 435; Id., 733. Uniform Administrative Procedure Act does not govern commission’s actions prior to appeal to Superior Court. 30 CA 85. Cited. Id.,

463; Id., 720; Id., 738; 31 CA 155; 32 CA 335; 33 CA 247; Id., 541; Id., 775; 34 CA 123; Id., 567; 35 CA 474; 36 CA 155; 37 CA 423; Id., 653; judgment reversed, see 238 C. 361; Id., 777; 38 CA 506; 41 CA 1; Id., 641; judgment reversed, see 240 C. 824; Id., 827; 42 CA 39; judgment reversed, see 241 C. 310; Id., 519; Id., 631; 44 CA 143; Id., 611; Id., 702; 45 CA 225; Id., 476; Id., 577. Trial court properly dismissed plaintiff's claims for failure to exhaust administrative remedies. 48 CA 102. Damage to professional reputation indirect result of agency hearing and not grounds for immediate judicial appeal. 52 CA 513. Substantial evidence standard is satisfied if the record provides a substantial basis of fact from which the fact in issue can be reasonably inferred; in order to determine whether there was substantial evidence, trier of fact must have conducted a complete and thorough investigation. 57 CA 767. Because commissioner did not give plaintiff opportunity to remedy application's deficiencies or to request that application be deemed complete as submitted and have those deficiencies examined in the forum of a public hearing as required by Sec. 22a-374, plaintiff has met requirements for an appeal from a final decision in a contested case. 71 CA 395. General rule that an administrative agency may and must determine whether it has jurisdiction in particular situation is inapplicable where statutory framework governing appeals from administrative decisions does not afford mechanism for adequate judicial review of psychiatric security review board's decision regarding its own jurisdiction. 105 CA 477. A remand to an agency is not necessarily governed by either Subsec. (h) or (j); the types of remands addressed herein do not constitute an exhaustive list and a remand order more properly characterized as a request for articulation is not within the scope of section. 138 CA 141.

Cited. 30 CS 118. Trial de novo on appeal, discretionary. Id., 262. Cited. Id., 309. Appeal from administrative agency not civil action. Id., 333. Cited. 31 CS 15. Exhaustion requirement was accepted rule before enactment of chapter; Secs. 16-35 and 16-39 are the "other means of review, redress, relief or trial de novo" as contained in Subsec. (a). Id., 65. The time and method for an appeal pursuant to section from an administrative agency are mandatory and jurisdictional. Id., 186. Cited. Id., 212; 32 CS 104. Challenge to regulation should follow statutory procedure, commencing under Sec. 4-176. Court should not grant injunction in lieu of this procedure. Id., 153. Cited. Id., 300. "Failure to exhaust all administrative remedies" applied so as to deprive court of jurisdiction. 33 CS 86. Cited. 34 CS 199; Id., 225; 35 CS 186; 36 CS 1. Court has no authority to enter an interim enforcement order against appellant at appellee's request; sole interim action authorized is stay requested by nonprevailing party at administrative hearing. Id., 285. Common sense and federal case law indicate where record is incomplete for some reason, remand to agency to take additional evidence is only method to insure meaningful judicial review. Id., 297. Cited. Id., 305; 38 CS 460; Id., 712; 39 CS 56; Id., 99; Id., 176; Id., 257; Id., 443; Id., 462; 40 CS 505; Id., 520; Id., 554; 41 CS 267; 42 CS 57; Id., 84; Id., 129; Id., 157; Id., 217; Id., 291; Id., 306; Id., 558; Id., 599; Id., 602; 43 CS 1; Id., 175; Id., 246; Id., 340; Id., 386; Id., 457; 44 CS 21; Id., 223; Id., 230; 45 CS 57.

Subsec. (a):

Cited. 170 C. 668; 171 C. 348. Section is principally addressed to forms of relief which are available after relief has been sought through an agency. 173 C. 352. Cited. 175 C. 415; 177 C. 616; 178 C. 586; 189 C. 550; 191 C. 497. Same reasons that support the prohibition against appeals from interlocutory orders in trial court are equally pertinent in the administrative context. 202 C. 150. Cited. 205 C. 324; 207 C. 346; 208 C. 709; 210 C. 349; 214 C. 560; Id., 726; 224 C. 693; 226 C. 670; Id., 792; 229 C. 31; 233 C. 486; 234 C. 411; Id., 488; Id., 704; 235 C. 128; 237 C. 209; 238 C. 361; 239 C. 599; 240 C. 141; Id., 824; Id., 835; 242 C. 152. Trial court lacked jurisdiction because plaintiff had no statutory right to appeal from board's refusal to hold commutation hearing. 272 C. 647. No explicit language in the environmental protection act that demonstrates the legislature's intent to alter the aggrievement requirement if the appealing party happens to raise an environmental issue; the expansive right to petition for a declaratory ruling under Sec. 4-176 does not confer an automatic right to appeal under this section. 286 C. 698.

Cited. 3 CA 464; Id., 531; 21 CA 629; 33 CA 727; 34 CA 352; 35 CA 111; 41 CA 866; 42 CA 700; judgment reversed, see 240 C. 835. Plaintiff was not aggrieved by final decision because hearing, which was not required by statute, did not constitute a contested case within meaning of statute. 75 CA 215. There is no right to appeal from a disciplinary hearing decision by Department of Correction because such hearings are expressly excluded from the class of contested cases under Sec. 4-166(2) and are not final decisions under Subsec. 115 CA 671. Husband was not aggrieved by wife's placement on child neglect and abuse registry under Sec. 17a-101k despite claim that wife's hyphenated surname included husband's name. 120 CA 376. Commission on Human Rights and Opportunities cannot obtain appellate review of its new claims because commission did not first seek review of them in the Superior Court. 129 CA 714.

Cited. 38 CS 24.

Subsec. (b):

Cited. 170 C. 3. Statutory right of appeal subject to strict compliance with time limitations. 177 C. 584. Cited. 181 C. 324. Discussion of venue provisions. 186 C. 198. Cited. 188 C. 90. Unnecessary to name and serve a hearing board as a defendant; a hearing board is not an agency for purposes of appeal under UAPA. 198 C. 445. Cited. 201 C. 350; 202 C. 150; 204 C. 60; 205 C. 324. Department of Public Health was a party of record required to be cited and served an appeal in addition to board of examiners in podiatry. Id., 674. Cited. 210 C. 597; 211 C. 78. Court lacked jurisdiction where plaintiffs failed to comply with service requirements. 212 C. 157. Cited. 215 C. 517; 216 C. 667; 217 C. 143.

Cited. 1 CA 1; 3 CA 416. Construction of "agency" as used in statute to mean "hearing officer" would contravene Sec. 4-166(1), consequently service on hearing officer not required. 3 CA 464. Cited. 5 CA 643; 6 CA 148. Time requirement determined by notice containing commissioner's finding of fact, conclusion of law and the order of suspension. 7 CA 748. Cited. 10 CA 14; 14 CA 376; 15 CA 569; 16 CA 604; judgment reversed, see 212 C. 628; 18 CA 132; 21 CA 629; 22 CA 253; 34 CA 18; 35 CA 812; 37 CA 694.

Section requires only that a copy of the appeal be served on parties of record at a Blue Cross rate hearing before the Insurance Commissioner, not that they be made parties; appeals under this section and Sec. 33-167 are heard and decided together. 31 CS 257. Cited. Id., 456; 38 CS 538. Petitions filed must include citations and amendments thereto cannot cure defects in service of process. Id., 712.

Subsec. (c):

Cited. 186 C. 198; 200 C. 489; 204 C. 60; 207 C. 346; 216 C. 667; 217 C. 130; Id., 143; 219 C. 204. Time within which appeals may be filed controlled by provisions in effect when underlying agency proceedings commenced. 221 C. 482. Cited. Id., 922. Subdiv. (1): Service of process pursuant to section does not require a citation; judgment of Appellate Court in 26 CA 938 reversed. 225 C. 13. Failure to meet time limitation for filing appeal deprives trial court of subject matter jurisdiction over appeal. 227 C. 848. Cited. 233 C. 153; 235 C. 128; 237 C. 209; 239 C. 437. Service of process of appeals from administrative agencies is deemed perfected as of the date it is postmarked. 249 C. 503.

Cited. 24 CA 662; judgment reversed, see 223 C. 618; 31 CA 922; 37 CA 653; judgment reversed, see 238 C. 361; 45 CA 620. Service is not completed until the appeal is in possession of the subject agency or the Attorney General's office. 48 CA 711. 45-day filing requirement is a mandatory jurisdictional requirement. 61 CA 270. Service of process by a person who lacked statutory authority did not deprive trial court of subject matter jurisdiction for an administrative appeal when in every other respect service met requirements of statute; court found service requirement of statute to be directory and not mandatory and, in the absence of a

showing of prejudice, found service by a person who lacked statutory authority not to be the equivalent of a total failure of service of process. 69 CA 563. Failure of party to file administrative appeal under the UAPA within the 45 days required deprives trial court of subject matter jurisdiction over an appeal; thus, upon landlord's failure to file a timely appeal from Banking Commissioner's order requiring defendant landlord to return a security deposit, commissioner's findings and conclusions became final, binding and not subject to review. 76 CA 824. The only reasonable interpretation of Subsec. is that it lists four alternative time frames during which an appeal of a final decision may be brought, and that, in any given circumstance, only one such time frame will apply. 139 CA 565. Although plaintiff's late service of administrative appeal was claimed to be the result of misinformation received from court clerk, doctrine of equitable tolling could not save appeal from dismissal because 45-day service requirement is jurisdictional in nature and cannot be waived or circumvented for any reason. 141 CA 716. Federal prison mailbox rule inapplicable to Subsec. 149 CA 808.

Standards for granting stay. Application of balancing test. 35 CS 13. Singular nature of an appeal from freedom of information grant requires issuance of stay in order to preserve the statutory right of appeal under Sec. 1-21i(d); release of information would render an appeal moot. *Id.*, 186. Cited. 43 CS 10.

Subsec. (d):

Failure of board to follow form prescribed in statute not cause for reversal where conclusion supported by plaintiff's own testimony. 177 C. 344. Cited. 202 C. 453; 217 C. 130; 219 C. 204.

Cited. 34 CA 343; 45 CA 620. A mere showing of untimely service is not grounds for dismissal, and actual prejudicial consequences from failure of service must be shown. 127 CA 170.

Subsec. (e):

Trial court has no power to take any evidence. It may only order evidence, if required, be taken by the agency. 174 C. 271. Cited. *Id.*, 366; 200 C. 489; 201 C. 592; 202 C. 405; 219 C. 204.

Cited. 3 CA 531; 37 CA 653; judgment reversed, see 238 C. 361.

Subsec. (f):

Cited. 172 C. 292; 174 C. 258; *Id.*, 366; 176 C. 82; 177 C. 78; 204 C. 507; 220 C. 307; 223 C. 573; 228 C. 651.

Cited. 3 CA 531; 5 CA 520; 15 CA 569; 18 CA 241; 29 CA 576; 38 CA 168.

It was impermissible for court to, in effect, try the matter de novo when parties inserted new facts at the appellate level. 39 CS 520. Cited. 40 CS 293.

Subsec. (g):

Hearing in which teacher did not have notice of all charges brought against her held in violation of chapter. 167 C. 368. The court cannot substitute its discretion for that legally vested in the commission, but determines on the record whether there is a logical and rational basis for the decision of the commission or whether, in the light of the evidence, it has acted illegally or in abuse of its discretion. 168 C. 294. Cited. *Id.*, 504. Although the commissioner acts in a quasi-judicial capacity, his function is that of an administrative agency and conclusions reached by him are upheld if legally supported by evidence. *Id.*, 587. Scope of judicial review in appeal from administrative agency. 170 C. 327. Cited. 171 C. 348; *Id.*, 349. Evidence is sufficient to sustain

agency finding if it affords “a substantial basis of fact for which fact in issue can be reasonably inferred”. Id., 705. Cited. 172 C. 292; 174 C. 366; Id., 529; 175 C. 174; 176 C. 11; Id., 320; Id., 374; 177 C. 78; Id., 344; 179 C. 128. Lay commission acted without substantial evidence and arbitrarily when it relied on its own knowledge and experience concerning technically complex issue of pollution control. 180 C. 421. Cited. 181 C. 69. Decision of commission was affected by an “error of law”; it is for the courts, and not administrative agencies to expound and apply governing principles of law. Id., 324. Cited. Id., 544; 182 C. 314; 196 C. 623; 197 C. 91; 200 C. 1; Id., 133; Id., 145; Id., 489; 202 C. 405; Id., 453; 207 C. 77; 208 C. 442; 210 C. 214; 212 C. 100; 218 C. 580; Id., 757; 222 C. 380; 232 C. 91.

Cited. 4 CA 307; Id., 468; 13 CA 477; judgment reversed, see 210 C. 214; Id., 477; judgment reversed, see 210 C. 214; 15 CA 569; 19 CA 334; Id., 539; 34 CA 352; 35 CA 191; 38 CA 73.

Motion for stay of administrative decision affecting amendment to rate schedules does not operate as authorization for original request. 31 CS 172. Court, on examining record of Blue Cross rate hearing, affirms Insurance Commissioner’s modification of rate schedules as there is sufficient evidence to support his judgment. Id., 257. Where the finding of facts and the record did not disclose evidence of sufficient probative force to establish violation of Sec. 14-222, the commissioner’s conclusion of law was erroneous. Id., 325. Cited. 35 CS 28; 36 CS 1; Id., 18; Id., 166. Appeal of agency decision permitted. Id., 271. Cited. 40 CS 233; Id., 512.

Subsec. (h):

Cited. 214 C. 505. Proof that one’s attorney provided incompetent representation during the course of department proceedings may constitute a showing of a “good reason” for failing to present evidence. 259 C. 288.

Cited re appeal under Sec. 5-248c. 57 CA 767. Remand orders issued pursuant to Subsec. are not final judgments. 138 CA 141.

Subsec. (i):

Cited. 214 C. 505; 218 C. 646; 219 C. 139. Proof of aggrievement requires evidentiary hearing only in absence of a sufficient administrative record; judgment of Appellate Court in 41 CA 641 reversed. 240 C. 824. Cited. 241 C. 310.

Cited. 10 CA 14; 20 CA 474; 43 CA 39; Id., 133.

Subsec. (j):

Cited. 215 C. 590; 216 C. 253; 217 C. 153; 218 C. 580; 219 C. 51; Id., 121; Id., 139; 222 C. 380; 226 C. 704; 228 C. 158; Id., 651; Id., 699; 229 C. 31; 231 C. 328; 232 C. 122; Id., 599; 233 C. 486; 234 C. 312; 235 C. 778; 236 C. 96; Id., 250; 237 C. 209; 239 C. 207; Id., 599; 240 C. 119; Id., 141; 241 C. 310; 242 C. 79; Id., 599. Applies only to remands after rulings on the merits of an administrative appeal. 258 C. 529. Reaffirmed previous holdings that trial court order remanding administrative appeal under UAPA was final decision and further proceedings cannot affect parties’ rights. 262 C. 222.

Cited. 20 CA 474; 27 CA 346; 28 CA 262; Id., 500; 29 CA 576; 32 CA 56; Id., 501; Id., 727. Subdiv. (5): Judgment of trial court dismissing appeal is reversed. 34 CA 352, see also 27 CA 614, 226 C. 418. Cited. Id., 510; Id., 620; 35 CA 111; Id., 384; 37 CA 303; Id., 694; 38 CA 322; Id., 506; 41 CA 67; 42 CA 402; 43 CA 133; Id., 636; 44 CA 611; 45 CA 83; Id., 225. It is not the role of the court to substitute its judgment for that

of zoning board of appeals in case involving certificate of approval pursuant to Sec. 14-54 when there was substantial evidence on the record to support board's decision. 48 CA 599. Subdiv. (5): Standard of review discussed. 49 CA 513. Substantial evidence rule governing judicial review of administrative fact-finding under Uniform Administrative Procedure Act discussed. 62 CA 45. Section sets forth a substantial evidence rule which governs judicial review of administrative fact-finding. 72 CA 452. A remand issued by a trial court pursuant to Subsec. constitutes a final judgment for the purpose of appeal irrespective of the nature of the remand and administrative proceedings that are expected to follow it. 138 CA 141.

Cited. 42 CS 413. Scope of judicial review. 45 CS 292.

Subsec. (k):

Cited. 234 C. 312; 235 C. 778; 236 C. 96; Id., 250; 237 C. 209.

Cited. 20 CA 474; 24 CA 662; judgment reversed, see 233 C. 618.

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Sec. 4-184. Appeal from final judgment of Superior Court. An aggrieved party may obtain a review of any final judgment of the Superior Court under this chapter. The appeal shall be taken in accordance with section 51-197b.

(1971, P.A. 854, S. 19; P.A. 76-436, S. 475, 681.)

History: P.A. 76-436 replaced court of common pleas with superior court and made review subject Sec. 52-7, effective July 1, 1978.

Cited. 171 C. 345; Id., 691; 172 C. 263; 173 C. 462; 186 C. 153. Freedom of information commission was not an aggrieved party and therefore was not eligible to appeal. 191 C. 173. Cited. 192 C. 234; 202 C. 405; 204 C. 672; 208 C. 187; 210 C. 597; 216 C. 253.

Cited. 1 CA 1; 17 CA 429; 18 CA 13; 19 CA 489; 30 CA 720; 37 CA 694; 42 CA 519; 45 CA 476.

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Sec. 4-184a. Award of reasonable fees and expenses to certain prevailing parties in appeals of agency decisions. (a) For the purposes of this section:

(1) "Person" means a person as defined in section 4-166, but excludes (A) an individual with a net worth in excess of five hundred thousand dollars, (B) a business whose gross revenues for the most recently completed fiscal year exceeded one million five hundred thousand dollars, (C) a business with more than twenty-five employees and (D) an agency as defined in section 4-166.

(2) "Reasonable fees and expenses" means any expenses not in excess of seven thousand five hundred dollars which the court finds were reasonably incurred in opposing the agency action, including court costs, expenses incurred in administrative proceedings, attorney's fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

(b) In any appeal by an aggrieved person of an agency decision taken in accordance with section 4-183 and in any appeal of the final judgment of the Superior Court under said section taken in accordance with section 51-197b, the court may, in its discretion, award to the prevailing party, other than the agency, reasonable fees and expenses in addition to other costs if such prevailing party files a request for an award of reasonable fees and expenses within thirty days of the issuance of the court's decision and the court determines that the action of the agency was undertaken without any substantial justification.

(P.A. 83-284; P.A. 88-317, S. 26, 107; P.A. 97-88.)

History: P.A. 88-317 added Subsec. (a)(1)(D), excluding an agency from definition of "person", effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 97-88 amended Subsec. (b) to require a prevailing party seeking an award of reasonable fees and expenses to file a request therefor within 30 days of the issuance of the court's decision.

Cited. 204 C. 17; Id., 672; 214 C. 505; 216 C. 85; 237 C. 28.

Cited. 18 CA 13; 30 CA 720; 38 CA 506; 43 CA 39; 45 CA 543.

Subsec. (b):

Cited. 240 C. 141. Agency action must be entirely unreasonable or without any reasonable basis in law or fact. 249 C. 693. Department of Social Services' actions were not entirely unreasonable where department made a good faith interpretation of the legislative mandate to minimize financial risk to Medicaid program. 258 C. 642.

Cited. 26 CA 326; 41 CA 866. Agency's action must be entirely unreasonable or without any reasonable basis in law or fact to prevail. 51 CA 96. Trial court abused discretion in not awarding attorneys' fees under section because agency had no fewer than three opportunities to take appropriate action and thus there was no substantial justification for its failure to act. 75 CA 142.

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Sec. 4-185. Application of chapter. (a) This chapter applies to all agency proceedings commenced on or after July 1, 1989. Each agency proceeding commenced before July 1, 1989, is governed by the law in effect when the proceeding was commenced.

(b) Notwithstanding any other provision of the general statutes to the contrary in existence on July 1, 1989, this chapter shall apply to all agencies and agency proceedings not expressly exempted in this chapter.

(1971, P.A. 854, S. 21; P.A. 88-317, S. 24, 107.)

History: P.A. 88-317 repealed former section which stated that "Except as to proceedings pending on January 1, 1972, this chapter applies to all agencies and agency proceedings not expressly exempted" and substituted all new provisions, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Cited. 170 C. 668; 171 C. 691; 172 C. 263. Claims commission not exempt; exclusions of Governor, Lieutenant-Governor and Attorney General from definition of "agency" constitute exemptions from chapter. Id., 603. Cited. 173 C. 352; Id., 462; 183 C. 76; 186 C. 153; 188 C. 90; 191 C. 173; 193 C. 379; 195 C. 534;

204 C. 259; Id., 672; 211 C. 508; 213 C. 184; 217 C. 130; Id., 143; 220 C. 192; Id., 516; 221 C. 482; 223 C. 573.

Cited. 1 CA 1; 18 CA 13; 28 CA 435; 30 CA 720.

Subsec. (b):

The legislature did not intend to restrict judicial review of the Psychiatric Security Review Board's declaratory rulings re the validity of its regulations. 291 C. 307.

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Sec. 4-185a. Validation of certain actions. Section 4-185a is repealed.

(P.A. 73-620, S. 16, 19; P.A. 88-317, S. 106, 107.)

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Sec. 4-186. Chapter 54 exemptions and conflicts. (a) Appeals from the decisions of the administrator of the Unemployment Compensation Act, appeals from decisions of the employment security appeals referees to the board of review, and appeals from decisions of the Employment Security Board of Review to the courts, as is provided in chapter 567, and appeals from the Commissioner of Revenue Services to the courts, as provided in chapters 207 to 212a, inclusive, 214, 214a, 217, 218a, 219, 220, 221, 222, 223, 224, 225, 227, 228b, 228c, 228d, 228e and 229 and appeals from decisions of the Secretary of the Office of Policy and Management pursuant to sections 12-242hh, 12-242ii and 12-242kk, are excepted from the provisions of this chapter.

(b) In the case of conflict between the provisions of this chapter and the provisions of chapter 567 and provisions of the general statutes relating to limitations of periods of time, procedures for filing appeals, or jurisdiction or venue of any court or tribunal governing unemployment compensation, employment security or manpower appeals, the provisions of the law governing unemployment compensation, employment security and manpower appeals shall prevail.

(c) The Employment Security Division and the Board of Mediation and Arbitration of the state Labor Department, the Claims Commissioner, and the Workers' Compensation Commissioner are exempt from the provisions of section 4-176e and sections 4-177 to 4-183, inclusive.

(d) The provisions of this chapter shall not apply: (1) To procedures followed or actions taken concerning the lower Connecticut River conservation zone described in chapter 477a and the upper Connecticut River conservation zone described in chapter 477c, (2) to the administrative determinations authorized by section 32-9r concerning manufacturing facilities in distressed municipalities, (3) to the rules made pursuant to section 9-436 for use of paper ballots and (4) to guidelines established under section 22a-227 for development of a municipal solid waste management plan.

(e) The provisions of this chapter shall apply to the Board of Regents for Higher Education in the manner described in section 10a-7 and to the Department of Correction in the manner described in section 18-78a.

(f) The provisions of section 4-183 shall apply to the Psychiatric Security Review Board in the manner described in section 17a-597, and to appeals from the condemnation of a herd by the Commissioner of

Agriculture in the manner described in section 22-288a.

(g) The provisions of section 4-183 shall apply to special education appeals taken pursuant to subdivision (4) of subsection (d) of section 10-76h, in the manner described therein. The final decision rendered in the special education hearings pursuant to section 10-76h shall be exempt from the provisions of section 4-181a.

(h) The Higher Education Supplemental Loan Authority and the Municipal Liability Trust Fund Committee are not agencies for the purposes of this chapter.

(i) Guidelines, criteria and procedures adopted pursuant to section 10a-225 by the Connecticut Higher Education Supplemental Loan Authority and the state-wide solid waste management plan adopted under section 22a-227 shall not be construed as regulations under this chapter.

(j) The Judicial Review Council is exempt from the provisions of sections 4-175 to 4-185, inclusive.

(1972, P.A. 293, S. 1; P.A. 77-426, S. 8, 19; 77-603, S. 5, 125; 77-614, S. 139, 610; P.A. 88-317, S. 25, 107; P.A. 91-277, S. 5, 6; P.A. 92-262, S. 39, 42; P.A. 93-353, S. 36, 52; P.A. 95-2, S. 21, 37; 95-132, S. 3, 5; P.A. 97-132, S. 5; June 30 Sp. Sess. P.A. 03-6, S. 146(e); P.A. 04-189, S. 1; P.A. 11-48, S. 285.)

History: P.A. 77-426 deleted reference to unemployment commissioners and included appeals from decisions of employment security appeals referees to the board of review and from decisions of board of review under exception; P.A. 77-603 included appeals from decisions of tax commissioner to courts in exception; P.A. 77-614 replaced tax commissioner with commissioner of revenue services, effective January 1, 1979; P.A. 88-317 designated former section as Subsec. (a) and added Subsecs. (b) to (h), inclusive, re applicability of chapter 54 to specific procedures, programs and agencies, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 91-277 amended Subsec. (f) to delete reference to special education appeals taken pursuant to Sec. 10-76h(e)(3) and inserted new Subsec. (g) on special education appeals, relettering the remaining Subsecs. accordingly; P.A. 92-262 amended Subsec. (g) to substitute 1993 for 1992; (Revisor's note: In 1993 an obsolete reference in Subsec. (d)(3) to "the adoption review board established pursuant to section 45-68d" was deleted editorially by the Revisors since Sec. 45-68d is repealed, and Subdivs. (4) and (5) were renumbered accordingly as Subdivs. (3) and (4)); P.A. 93-353 amended Subsec. (g) to remove provision limiting the exemption from the provisions of Sec. 4-181a to the period from June 24, 1991, to September 30, 1993, effective July 1, 1993; P.A. 95-2 added appeals from decisions under Secs. 12-242hh, 12-242ii and 12-242kk, effective March 8, 1995; P.A. 95-132 amended Subsec. (a) to exclude appeals under chapters 214a, 217, 218a, 220, 223, 227, 228b, 228c, 228d, 228e and 229 from the chapter and deleted reference to chapter 215, effective June 7, 1995; P.A. 97-132 added Subsec. (j) exempting Judicial Review Council from provisions of Secs. 4-175 to 4-185, inclusive; June 30 Sp. Sess. P.A. 03-6 replaced Commissioner of Agriculture with Commissioner of Agriculture and Consumer Protection, effective July 1, 2004; P.A. 04-189 repealed Sec. 146 of June 30 Sp. Sess. P.A. 03-6, thereby reversing the merger of the Departments of Agriculture and Consumer Protection, effective June 1, 2004; pursuant to P.A. 11-48, "Board of Governors of Higher Education" was changed editorially by the Revisors to "Board of Regents for Higher Education" in Subsec. (e), effective July 1, 2011.

Cited. 168 C. 504; 172 C. 263; 173 C. 462; 183 C. 76; 186 C. 153; 191 C. 173; 202 C. 583; 204 C. 672; Id., 137; 215 C. 134; 239 C. 32; 242 C. 599.

Cited. 1 CA 1; 18 CA 13; 30 CA 720; 34 CA 620; 43 CA 779.

Cited. 43 CS 10.

Subsec. (f):

The legislature did not intend to restrict judicial review of the Psychiatric Security Review Board's declaratory rulings re the validity of its regulations. 291 C. 307.

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Secs. 4-187 and 4-188. Unemployment compensation, employment security and manpower appeals. Employment Security Division and the Board of Mediation and Arbitration exempt. Sections 4-187 and 4-188 are repealed.

(1972, P.A. 293, S. 2, 3; P.A. 75-557; P.A. 88-317, S. 106, 107.)

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Sec. 4-188a. Requirements for exemption of constituent units of state system of higher education. The provisions of this chapter shall not apply to the constituent units of the state system of higher education, provided the board of trustees for each such constituent unit shall (1) after providing a reasonable opportunity for interested persons to present their views, promulgate written statements of policy concerning personnel policies and student discipline, which shall be made available to members of the public, and (2) in cases of dismissal of tenured, unclassified employees, dismissal of nontenured, unclassified employees prior to the end of their appointment, and proposed disciplinary action against a student, promulgate procedures which shall provide (A) written notice to affected persons of the reasons for the proposed action; (B) a statement that the affected person is entitled to a hearing if he so requests; and (C) a written decision following the hearing.

(P.A. 75-529, S. 1, 4; P.A. 80-471, S. 7; P.A. 88-317, S. 58, 107.)

History: P.A. 80-471 lettered subdivisions previously numbered and numbered those previously lettered and replaced reference to "dismissal or suspension of a student for disciplinary reasons" with "proposed disciplinary action against a student"; P.A. 88-317 made technical change to incorporate in reference to "this chapter" new sections added to Ch. 54, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Section does not have retroactive effect. 174 C. 366. Cited. 183 C. 76; 186 C. 153; 191 C. 173; 204 C. 672.

Cited. 1 CA 1; 2 CA 196; 18 CA 13; 30 CA 720.

State system of higher education exempted from chapter. 32 CS 153.

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Sec. 4-189. Repeal of inconsistent provisions. Any provisions in the general statutes that are inconsistent with the provisions of this chapter are repealed, provided nothing contained in this chapter shall be deemed to repeal provisions in the general statutes that provide for the confidentiality of records.

(P.A. 73-620, S. 15, 19; P.A. 88-317, S. 96, 107.)

History: P.A. 88-317 substituted “chapter” for “section” in the “provided” clause, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Cited. 168 C. 435; Id., 504; 172 C. 263. Section has no more force than doctrine of repeal by implication; does note repeal Sec. 4-164(b). Id., 603. Cited. 173 C. 352; 181 C. 69; 186 C. 153; 191 C. 173; 204 C. 672; 232 C. 181.

Cited. 1 CA 1; 18 CA 13; 30 CA 720.

Secs. 16-35 to 16-39, inclusive, not repealed by this section. 31 CS 65. Cited. 38 CS 24; 41 CS 271.

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Secs. 4-189a to 4-189g. Reserved for future use.

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