

Regular Session, 2010

ACT No. 683

HOUSE BILL NO. 78

BY REPRESENTATIVES LIGI, HINES, AND ROSALIND JONES

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AN ACT

To amend and reenact R.S. 49:992(B)(2) and (D)(2) and (7), relative to adjudicatory and hearing functions of the division of administrative law and certain state departments; to provide for the adjudication and hearing functions of the Department of Health and Hospitals, the Department of Social Services, and the Department of Education; to provide for the delegation of certain functions and authority to the division of administrative law, except where prohibited by federal law; to require an agency to prove its exempt status; to provide for adjudications of hearings arising under certain federal programs; to provide for the transfer of adjudications and the resources related to handling such adjudications; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:992(B)(2) and (D)(2) and (7) are hereby amended and reenacted to read as follows:

§992. Applicability; exemptions; attorney fees; court costs

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B.

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(2) ~~In~~ Except in the instance of adjudications initiated pursuant to Items (D)(2)(b)(iii), (vi), and (vii) of this Section, in an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order. Upon the issuance of such a final decision or order, the agency or any official thereof shall comply fully with the final order or decision of the administrative law judge.

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(2)(a) ~~Any~~ Except as otherwise provided in Subparagraph (b) of this Paragraph, any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(b) This Subparagraph shall apply to the Department of Health and Hospitals, the Department of Social Services, the Department of Education, and any agency within these departments:

(i) If the department or an agency within the department is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means its fair hearings function, then such fair hearings shall be exempt from the provisions of this Chapter to the extent of the federal mandate; however, if such federally mandated hearings function may be delegated by contract or other means, the department or agency shall delegate such function to the division. If the department or agency claims a federal mandate exemption, the department or agency shall have the burden of proving such exemption.

(ii) If the department or an agency within the department is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means both its fair hearings function and its authority to render a final decision or order in an adjudication proceeding, then such fair hearings and adjudication proceedings shall be exempt from the provisions of this Chapter to the extent of the federal mandate; however, if such federally mandated hearings function and authority to render a final decision or order in an adjudication proceeding may be delegated by contract or other means, the department or agency shall delegate such function and authority to the division. If the department or agency claims a federal mandate exemption, the department or agency shall have the burden of proving such exemption.

1 (iii)(aa) If a department or an agency within the department may delegate its
2 fair hearings function but is required by federal mandate to render the final decision
3 or order in an adjudication proceeding, then in those cases, the division shall conduct
4 the hearing and issue a recommended decision. The recommended decision shall be
5 mailed or delivered to the head of the agency, who shall have, upon receipt of the
6 recommended decision, thirty-five days to reject, modify, or approve the decision.
7 If he rejects or modifies the recommended decision, he shall specify in writing the
8 findings of fact or conclusions of law which are being rejected or modified which
9 shall be considered to be the final decision or order in the adjudication proceeding.
10 A copy of the department or agency's rejected or modified decision shall be
11 forwarded to the division on the day it is issued. If the agency head does not reject
12 or modify the recommended decision within thirty-five days, or if he approves the
13 recommended decision, then the recommended decision of the division shall be
14 certified as the final decision or order of the department or agency in the adjudication
15 proceeding.

16 (bb) In Temporary Assistance for Needy Families (TANF) cases, if the
17 secretary of the Department of Social Services approves, rejects, or modifies the
18 recommended decision of the division, that approved, rejected, or modified decision
19 shall be issued by the division as the final decision of the Department of Social
20 Services.

21 (iv) The provisions of this Subparagraph shall not apply to any board which
22 is exempt from this Chapter pursuant to Paragraph (5) of this Subsection or to any
23 board or commission which chooses to continue to conduct hearings pursuant to
24 Subsection G of this Section.

25 (v) The division shall adjudicate within seventy-two hours of receipt all stay
26 requests related to involuntary discharges from nursing homes. The division shall
27 adjudicate all appeals related to involuntary discharges from nursing homes within
28 thirty days of receipt.

29 (vi) Notwithstanding any provision of law to the contrary, an adjudication
30 of a decision by the Department of Health and Hospitals to deny, suspend, or revoke

1 the license of an outpatient abortion facility, ambulatory surgical center, home health
 2 agency, hospital, or nursing home, pursuant to R.S. 40:2009.7, 2110, 2116.37, 2141,
 3 or 2175.6 shall be heard by a three member panel of division of administrative law
 4 judges. This panel shall be deemed to meet the requirements of a panel appointed
 5 by the secretary of the Department of Health and Hospitals. The three member panel
 6 shall issue a final decision or order. The final decision or order shall be appealable
 7 to the district court for the parish of East Baton Rouge.

8 (vii) The provisions of this Subparagraph shall apply to hearings involving
 9 the Department of Education required under the Individuals with Disabilities
 10 Education Act, and the provisions of the Administrative Procedure Act shall not
 11 apply to these hearings. Hearings involving the Individuals with Disabilities Act
 12 shall proceed in accordance with regulations promulgated by the Board of
 13 Elementary and Secondary Education. Only an administrative law judge who has
 14 received training on the federal and state statutes and regulations with respect to
 15 children with disabilities and on educational placements in Louisiana's school
 16 systems shall conduct hearings pursuant to this Item. Any party aggrieved by the
 17 findings and decisions of the administrative law judge in hearings conducted
 18 pursuant to the Individuals with Disabilities Education Act, including local
 19 educational authorities, shall have a right to bring a civil action in state or federal
 20 court pursuant to federal law or regulation.

* * *

22 (7) All adjudications by the assistant secretary of the office of conservation
 23 pursuant to ~~Chapter~~ Chapters 1 and 7 of Subtitle 1 of Title 30 of the Louisiana
 24 Revised Statutes of 1950, except determinations of violations of laws, rules,
 25 regulations, and orders, and determinations of penalties for such violations, shall be
 26 exempt from the provisions of this Chapter.

* * *

28 Section 2. The Department of Health and Hospitals and the Department of Education
 29 shall each enter into a memorandum of understanding with the division of administrative law
 30 regarding procedures for docketing of appeals and issuing decisions to be executed prior to

1 October 1, 2010. If either memorandum of understanding has not been fully executed by
 2 October 1, 2010, the affected department and the division of administrative law shall appear
 3 before the Committee on House and Governmental Affairs to provide an explanation as to
 4 their failure to comply with this Section.

5 Section 3. The Department of Health and Hospitals, the Department of Social
 6 Services, the Department of Education, and any agency within these departments shall work
 7 with the division of administrative law to complete the transfer of adjudications to the
 8 division as provided for in this Act and the personnel, equipment, furniture, and budgets
 9 related to handling such adjudications which are not exempt under R.S. 49:992(D)(2)(b)(i)
 10 and (ii) as enacted by this Act. Such transfers shall be complete by January 1, 2011.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____