

officers	177	16. Official notice	181
4. Accusation	177	17. Amendment of accusation	
5. Statement of issues	178	after submission	181
6. (1) Service of accusation:		18. (1) Decision	182
what included	178	(2) Adoption of proposed	
(2) Statement to respond-		decision of hearing	
ent	178	officer	182
(3) Manner of service	178	(3) Procedure upon fail-	
7. Notice of defense	178	ure to adopt proposed	
8. Amended or supplemental		decision	182
accusation	179	19. Form of decision: retro-	
9. Time and place of hearing	179	active effect	182
10. Form of notice of hearing	179	20. Effective date of decision	182
11. (1) Subpenas	179	21. Defaults	182
(2) Witnesses from more		22. Reconsideration	183
than 100 miles	179	23. Petition for reinstatement	
(3) Witness fees and		or reduction of penalty	183
expenses	180	24. Judicial review	183
12. Depositions	180	25. Scope of review	183
13. (1) Hearing officer to		26. Continuances	184
preside	180	27. Contempt	184
(2) Powers of hearing		28. Mail vote	184
officer	180	29. Charge	184
(3) Disqualification of		30. Power to administer	
hearing officer and		oaths	184
agency members	180	31. Impartiality	184
(4) Reporter	181	32. Repealer	185
14. Evidence rules	181	33. Term "Superior Court"	
Admissibility of evidence	181	includes District Court	185
15. Evidence by affidavit	181		

CHAPTER 143

AN ACT

Establishing administrative procedures for executive, quasi-judicial and quasi-legislative agencies of the State; providing standard procedures for the adoption, promulgation after notice and public hearing, and judicial review of rules and regulations adopted by the State agencies; providing for due process and standard procedural methods in connection with administrative adjudication and quasi-judicial hearings conducted by specified State agencies; providing for judicial review of administrative rules and regulations and of administrative adjudications; providing for legislative review of rules and regulations; requiring that all agency meetings be public; and repealing or amending all laws inconsistent herewith.

(H.B. 13)

Be it enacted by the Legislature of the State of Alaska:

Chapter I. Rules and Regulations

Article I

General

Section 1. Short Title. This Act constitutes and may be cited as the Administrative Procedure Act.

Sec. 2. Definitions. In this chapter, unless otherwise specifically indicated:

(1) "State agency" means and includes all departments, offices, agencies, and other organizational units of the executive branch, except as may be expressly excluded by this Act or otherwise by law, but does not include an agency in the judicial or legislative departments of the State Government.

(2) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any rule, regulation, order or standard adopted by any State agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the State agencies. "Regulation" does not mean or include any form prescribed by a State agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this Act when one is needed to implement the law under which the form is issued. "Regulation" shall include "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, which have the effect of rules, orders, regulations or standards of general application, and such and similar phraseology shall not be used to avoid or circumvent this Act. Whether a regulation, regardless of name, is covered by this Act depends in part on whether it affects the public or is used by the agency in dealing with the public.

(3) "Order of repeal" means any resolution, order or other official act of a State agency which expressly repeals a regulation in whole or in part.

(4) Rule making powers conferred by the State Organization Act of 1959 shall be subject to this Act.

Sec. 3. Secretary of State. "Secretary of State" as used in this chapter means the office of the Secretary of State in the executive branch of the State Government, or such other agency as shall be designated by executive order pursuant to the Constitution.

Sec. 4. Proviso. Except for the authority conferred upon the Secretary of State in Article III hereof, nothing in this chapter confers authority upon or augments the authority of any State agency to adopt, administer, or enforce any regulation. Each regulation adopted, to be effective, must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

Sec. 5. Limitation. Whenever by the express or implied terms of any statute a State agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Any existing rules or regulations conflicting with this section are hereby repealed.

Article II Filing and Publication

Section 1. Filing Present and Future Regulations. Every State agency shall:

(1) Transmit for filing to the Secretary of State a certified copy of every regulation adopted by it except one which:

(a) Establishes or fixes rates, prices or tariffs,

(b) Relates to the use of public works, including streets and highways, under the jurisdiction of any State agency when the effect of such order is indicated to the public by means of signs or signals.

(c) Is directed to a specifically named person or to a group of persons and does not apply generally throughout the State.

(2) File with the Secretary of State on a date designated by him a certified copy of every existing rule and regulation adopted by it and in effect on the effective date hereof, and upon which the agency intends to rely as being effective.

(3) Transmit to the Secretary of State for filing a certified copy of every order of repeal of a regulation required to be filed under subdivision (1) of this section.

(4) Deliver to the Secretary of State at the time of filing two duplicate copies of the regulation or order of repeal together with a citation of the authority pursuant to which it or any part thereof was adopted.

Sec. 2. Style and Form of Filing. The

Secretary of State shall prescribe the style in which regulations shall be prepared and a standard size form to be used in filing regulations pursuant to the preceding section, which form shall be effective within fifteen days after the effective date hereof, and he shall notify all agencies subject to the provisions of this article of the date when the form so prescribed by him becomes effective.

Sec. 3. Approval and Filing. The Secretary of State shall examine each regulation or order of repeal transmitted to him for filing and determine whether it complies with the form and style prescribed.

Sec. 4. Fees. No fee shall be charged by any State officer or public official for the performance of any official act in connection with the certification or filing of regulations pursuant to this article.

Sec. 5. Endorsement by Secretary of State. The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with him, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection.

Sec. 6. Filing with Local Government Unit Clerks. The Secretary of State shall file one copy of each issue of the Alaska Administrative Code and of the Alaska Administrative Register in the office of the clerk of each local government unit in the State, or if the authority to accept filings on his behalf has been delegated, to the person to whom such authority has been delegated.

Sec. 7. Presumptions from Filing. The filing of a certified copy of a regulation or an order of repeal with the Secretary of State raises the rebuttable presumption that:

- (1) It was duly adopted.
- (2) It was duly filed and made available for public inspection at the day and hour endorsed on it.
- (3) All requirements of this chapter and the regulations relative to such regulation have been complied with.
- (4) The text of the certified copy

of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

Sec. 8. Presumptions from Publication. The publication of a regulation in the Alaska Administrative Code or Register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register.

Sec. 9. Voluntary Filing and Publication. With the approval of the Secretary of State, any State agency may file with the Secretary of State and he may publish in such manner as he believes proper any regulation or order of repeal of a regulation not required by this article to be filed with the Secretary of State.

Article III

The Alaska Administrative Register and Code

Section 1. Codification and Publication. The Secretary of State shall:

(1) Provide for the continuing compilation, codification and publication, with periodic supplements, of all regulations required to be filed with his office, or of appropriate references to any regulations the printing of which he finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application.

The publication of compiled regulations shall be known as the "Alaska Administrative Code", and the periodic supplements thereto shall be known as the "Alaska Administrative Register".

(2) Prescribe regulations for carrying out the provisions of Articles II and III of this chapter. Among other things the regulations shall provide for the manner and form in which regulations, notice of the repeal of regulations,

compilations, and codifications shall be prepared, printed, and indexed, to the end that all regulations, compilations, and codifications shall be prepared and published in a uniform manner and at the earliest practicable date and that each regulation published shall be accompanied by a reference to the statutory authority pursuant to which it was enacted.

Sec. 2. Local Government Unit Clerks to Receive Code and Register. The Secretary of State shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, which have been or are published and of each supplement to such code or register to the clerk of each local government unit, or if the authority to accept filings on his behalf has been delegated, to the person to whom such authority has been delegated.

Sec. 3. Price at Which Sold. The Alaska Administrative Register and the Alaska Administrative Code shall as nearly as practical be sold by the Secretary of State at such prices as will reimburse the State for all costs incurred for printing, publication and distribution.

All money received from the sale of the Alaska Administrative Register and the Alaska Administrative Code shall be deposited in the treasury and credited to the General Fund.

Sec. 4. Publication Date. The publication date shall be determined by the Secretary of State, and all rules and regulations thereafter filed and all rules and regulations theretofore filed and in effect on the publication date shall be published.

Sec. 5. Form of Publication. Nothing in this chapter limits or restricts the discretion of the Secretary of State to determine the form in which the Alaska Administrative Code, and the Alaska Administrative Register shall be published. Either or both of said publications may be issued in such units, whether in bound volumes or in loose-leaf form, separately or in combination, at the same or at different times, as the Secretary of State deems most economical and best adapted to make the current regulations available to interested persons and to the

public.

Article IV

Procedure for Adoption of Regulations

Section 1. Purpose of Article. It is the purpose of this article to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in Section 2 of this article, the provisions of this article are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this article repeals or diminishes additional requirements imposed by any such statute. The provisions of this article shall not be superseded or modified by any subsequent legislation except to the extent that such legislation shall do so expressly.

Sec. 2. Emergency Regulations. (1) The provisions of this article shall not apply to any regulation not required to be filed with the Secretary of State under this chapter, and only this section and Section 3 of this article shall apply to any regulation prescribing an agency's organization or procedure or to an emergency regulation adopted pursuant to subdivision (2) of this section.

(2) If in any particular case the State agency makes a finding, including a statement of facts constituting the emergency in writing that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal. It is the State policy that emergencies be held to a minimum and rarely be found to exist.

Sec. 3. Effective Date. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the thirtieth day after the date of filing unless:

(1) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by such statute.

(2) It is a regulation prescribing an agency's organization or procedure, in which event it shall become effective upon filing or upon any later date specified by the State agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(3) It is an emergency regulation or order of repeal adopted pursuant to subdivision (2) of Section 2 of this article, in which case the finding and the statement of the facts constituting the emergency shall be filed with the Secretary of State, together with the emergency regulation or order of repeal, which shall, in that event only, become effective upon filing or upon any later date specified by the State agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(4) A later date is prescribed by the State agency in a written instrument filed with, or as part of, the regulation or order of repeal.

Sec. 4. Emergency: Limitation on Effective Period. No regulation adopted as an emergency shall remain in effect more than ninety days unless the adopting agency has complied with Sections 5, 6, and 7 of this article prior to the adoption of the emergency regulation, or has, within said ninety-day period, given notice of the adoption of the emergency regulation in a manner substantially similar to that required for the proposed adoption of a regulation and has afforded interested persons the opportunity to present statements, arguments, or contentions in a manner substantially similar to that required by Section 7 of this article. The agency shall, prior to the expiration of the ninety-day period, transmit to the Secretary of State for filing a certification that either Sections 5, 6, and 7 of this article were complied with prior to adoption, or that compliance was had with this section within the said period. Failure to so certify shall constitute a repeal of the emergency regulation.

Sec. 5. Notice of Proposed Action. At least thirty days prior to the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(1) Published in such newspaper of

general circulation, trade or industry publication, as the State agency shall prescribe.

(2) Mailed to every person who has filed a request for notice thereof with the State agency.

(3) In cases in which the State agency is within a State department, mailed or delivered to the director of such department.

(4) When appropriate in the judgment of the State agency, (a) mailed to any person or group of persons whom the agency believes to be interested in the proposed action and, (b) published in such additional form and manner as the State agency shall prescribe.

Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required herein, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by that statute.

The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a State agency pursuant to this article.

Sec. 6. Contents of Notice. The notice of proposed adoption, amendment, or repeal of a regulation shall include:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law which are being implemented, interpreted, or made specific;

(3) Either the express terms or an informative summary of the proposed action;

(4) Such other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

Sec. 7. Public Proceedings. On the date and at the time and place designated in the notice the State agency shall afford any interested person or his duly authorized representative, or both, the

opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present the same orally. The State agency shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

In any hearing under this section the State agency or its duly authorized representative shall have authority to administer oaths or affirmations, and may continue or postpone such hearing from time to time to such time and at such place as it shall determine.

Sec. 8. Right to Petition. Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a State agency requesting the adoption or repeal of a regulation as provided in this article. Such petition shall state clearly and concisely:

(1) The substance or nature of the regulation, amendment, or repeal requested;

(2) The reasons for the request;

(3) Reference to the authority of the State agency to take the action requested.

Sec. 9. Procedure on Petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation pursuant to this article, a State agency shall within 30 days deny the petition in writing or schedule the matter for public hearing pursuant to Sections 5, 6, and 7 of this article.

Sec. 10. Retroactive Action: Limitation. All regulations promulgated by an agency subject to this Act which are primarily legislative in nature shall have prospective effect only. Any regulation adopted pursuant hereto which is primarily an "interpretative regulation" shall have retroactive effect only if the agency adopting it has adopted no prior inconsistent regulation or has followed no prior course of conduct inconsistent with said regulation. Silence or failure to pursue any course of conduct shall be deemed prior inconsistent conduct.

Article V

Judicial Review

Section 1. Court Review. Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the provisions of the Code of Civil Procedure and in addition to any other ground which may exist, such regulation may be declared to be invalid for a substantial failure to comply with the provisions of this chapter or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 2 (2) of Article 4.

Article VI

Agency Meeting Public

Section 1. Agency Meetings Public. All meetings of governing bodies of all State and local government agencies, including municipalities, boroughs, school boards and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations (advisory or otherwise) of the State or local government, supported in whole or in part by public funds or entrusted with the expending of public funds, except juries and such other agencies as shall be expressly exempt by the Legislature, shall be public meetings, but the public may be excluded only from such portions thereof as deal with matters, the immediate knowledge of which would deleteriously affect the finances of the government unit, or that deal with subjects that tend to prejudice the reputation and character of persons. When meetings are held at which such excepted subjects are to be discussed, the meeting must first be convened as a public meeting, and the question of holding an executive session to discuss matters that come within the two exceptions shall be determined by a majority vote of the agency, and no subjects can be considered at such executive session except those as are mentioned in the motion calling for the executive session, and no action shall be taken at said executive session.

Article VII

Legislative Review of Rules

Section 1. The Legislature, by resolution adopted by vote of both houses shall have the power to annul any agency or department rule or regulation. The Legislative Council shall annually review all agency regulations to determine if the legislative intent is being correctly followed. A comprehensive report of said annual review with recommendations shall be submitted to the members of the legislature fifteen days prior to the start of its regular session each January.

Chapter 2. Administrative Adjudication

Section 1. **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

(1) "Agency" includes the State boards, commissions and officers enumerated in Section 2 and those to which this chapter is made applicable by law or executive order involving reorganization under the Constitution. All of the agencies listed in Section 2 may delegate the power to act and to hear and to decide, unless expressly prohibited by law; in future laws, wherever the word "agency" alone is used, the power to act may be delegated by the agency, and wherever the words "agency itself" are used, the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(2) "Party" includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his official capacity, who has been allowed to appear in the proceeding.

(3) "Respondent" means any person against whom an accusation is filed pursuant to Section 4 or against whom a statement of issues is filed pursuant to Section 5.

(4) "Hearing officer" means a hearing officer qualified under Section 3.

(5) "Agency member" means any person who is a member of any agency to which this chapter is applicable, and includes any person who himself constitutes an agency.

Sec. 2. Application of Chapter. (1) The procedure of the following enumerated State boards, commissions, and officers or of their successors under the State Organization Act of 1959 or under reorganization pursuant to the Constitution shall be conducted pursuant to the provisions of this chapter; and said procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality and other similar matters, shall be governed by this Act despite similar provisions in the statutes dealing with the following enumerated State boards, commissions, and officers. Statutory provisions concerning penalties, criminal or civil; concerning additional relief by injunction or restraining order; concerning penalty provisions relating to suspension, revocation, reissuance, and other similar matters, of licenses, permits, leases, concessions, and other similar matters; and related matters which in their context do not relate to procedure, shall not be affected by the provisions of this Act except in cases of reinstatement or reduction of penalty. In certain instances, where indicated, the procedure that shall be conducted pursuant to this chapter is limited to certain functions of the agency.

Board of Barber Examiners
Board of Chiropractic Examiners
Board of Dental Examiners
Board of Engineers and Architects Examiners

Board of Examiners in Basic Sciences
Board of Examiners in Optometry
Board of Hairdressing and Beauty Culture Examiners

Territorial Medical Board
Land Board under Land Act where applicable

Board of Nursing
Board of Pharmacy
Board of Public Accountancy
Alaska Employment Security Commission, only as provided in subparagraph (3) of this section.

Alaska Real Estate Commission
Alaska Industrial Board
Alaska Aeronautics and Communications Commission

Board of Liquor Control
Oil and Gas Conservation Commission
Director of Finance, pursuant to Alaska Small Loans Act of 1955

Tax Commissioner, under Cigarette Tax Act of 1955

Banking Board of the Territory of Alaska

Board of Governors of the Alaska Bar

Alaska Highway & Public Works Board, as to suspension etc. of drivers' licenses

Department of Public Welfare, under Boarding and Foster Homes for Children Act of 1951 (Chap. 17, SLA 1951)

Territorial Board of Education, as to Discharge of Teachers (Chap. 71, SLA 1957)

— Alaska Department of Health, under "Radiation Protection Act" of 1957 (Chap. 66, SLA 1957)

— Commissioner of Health, under "Alaska Food, Drug & Cosmetic Act" of 1949 (Chap. 129, SLA 1949 as amended) and in connection with the licensing of embalmers per Sec. 11, Chap. 119, SLA 1949.

— Department of Health and its "Advisory Hospital Council" under Hospital Act of 1947 (40-6-1 et seq as amended)

— Water Pollution Control Board, under Alaska Water Pollution Control Act of 1949 (Chap. 117, SLA 1949)

— Board of Health, under Act of 1955 Regulating Tourist and Trailer Camps, Motor Courts and Motels (Chap. 100, SLA 1955)

Alaska Insurance Commission except as to procedure in respect to the filing of rates, and the approval or disapproval and administrative and judicial review of the same, as provided in Section 42-4-4, 42-4-5(a), (b), (c), (e) and (f), 42-4-7, and 42-4-17 ACLA 1949.

Commissioner of Labor, as to Employment Agencies (Chap. 94, SLA 1953 as amended)

(2) The procedure of any other agency shall be conducted pursuant to the provisions of this Chapter only as to those functions to which this chapter is made applicable by the statutes relating to the particular agency.

(3) Judicial review and scope of judicial review of all final decisions of the Employment Security Commission or its Appeal Tribunal shall be in accord with this Act notwithstanding anything to the contrary appearing in the Employment Security Act, but all other procedures of that Agency shall be as provided in the Employment Security Act and rules and regulations thereunder.

Sec. 3. Appointment of Hearing Officers. The Governor shall assign a qualified unbiased and impartial hearing officer, with experience in the general practice of law, to conduct hearings pursuant to this Act; said hearing officer may perform other duties in connection with the administration hereof and of other laws. Agencies with hearing officers may be permitted to continue their employment as such on an unbiased and impartial basis within the particular agency and may hire additional officers and prescribe additional qualifications but all such officers hired after the effective date hereof except by the Employment Security Agency shall have been admitted to practice law for at least two (2) years immediately preceding their appointment.

Sec. 4. Accusation. A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statute and rules. The accusation shall be verified unless made by a public

officer acting in his official capacity or by an employee of the agency on whose behalf the proceeding is to be held. The verification may be on information and belief.

Sec. 5. Statement of Issues. A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing, and in addition any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation; provided, that if the hearing is held at the request of the respondent, the provisions of Sections 6 and 7 shall not apply, and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 10.

Sec. 6. (1) Service of Accusation: What Included. Upon the filing of the accusation, the agency shall serve a copy thereof on the respondent as provided in subdivision (3). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 7. The copy of the accusation shall include or be accompanied by a statement that respondent may request a hearing by filing a notice of defense as provided in Section 7 within 15 days after service upon him of the accusation, and that failure to do so will constitute a waiver of his right to a hearing.

(2) **Statement to Respondent.** The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 7 of Chapter 2 of the Administrative Procedure Act to: (here insert name and address of agency).

(3) **Manner of Service.** The accusation and all accompanying information may be sent to respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires respondent to file his address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency.

Sec. 7. Notice of Defense. (1) Within 15 days after service upon him of the accusation, the respondent may file with the agency a notice of defense in which he may:

(a) Request a hearing;

(b) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;

(c) Object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense;

(d) Admit the accusation in whole or in part;

(e) Present new matter by way of defense.

Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all such notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(2) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion, may nevertheless grant a hearing. Unless objection is taken as provided in subdivision (1) (c), all objections to the form of the accusation shall be deemed waived.

(3) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

Sec. 8. Amended or Supplemental Accusation. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

Sec. 9. Time and Place of Hearing. The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred or the respondent resides within the Southeastern Senatorial District; in Anchorage if the transaction occurred or the respondent resides within the South Central Senatorial District; in Fairbanks or Nome, whichever is closer, to the place

where the transaction occurred or where the respondent resides if the transaction occurred or the respondent resides within the Central or Northwestern Senatorial Districts. The agency may, if the transaction occurred in a senatorial district other than that of respondent's residence, select the place of hearing appropriate for either district; the agency may select a different place nearer the place where the transaction occurred or the respondent resides; or the parties by agreement may select any place within the State.

Sec. 10. Form of Notice of Hearing. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the day of, 19....., at the hour of, upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office of agency).

Sec. 11. (1) Subpenas. Before the hearing has commenced the agency shall issue subpoenas and subpoenas duces tecum at the request of any party in accordance with the applicable provisions of Rule 45 of the Federal Rules of Civil Procedure or such rules as may be prescribed by the Supreme Court of the State of Alaska. After the hearing has commenced the agency itself hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(2) **Witnesses from More than 100 Miles.** The process issued pursuant to

subdivision (1) shall extend to all parts of the State and shall be served in accordance with the provisions of Rule 45 (c) of the Federal Rules of Civil Procedure, except the words "State of Alaska" shall be substituted in the third sentence for the words "United States", or such rules as may be prescribed by the Supreme Court of the State of Alaska. No witness shall be obliged to attend at a place out of the election district in which he resides unless the distance be less than 100 miles from his place of residence, except that the agency, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

(3) **Witness Fees and Expenses.** All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of \$15.00 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

Sec. 12. Depositions. On verified petition of any party, an agency may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of his testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an offi-

cer named in the petition for that purpose. Where the witness resides outside the State and where the agency has ordered the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court nearest to the principal office of the agency. The proceedings thereon shall be in accordance with provisions governing the taking of depositions in the Superior Courts of the State in civil actions or by the applicable provisions of the Federal Rules of Civil Procedure until the creation of the State courts.

Sec. 13. (1) Hearing Officer to Preside. Every hearing in a contested case shall be presided over by a hearing officer. The agency itself shall determine whether the hearing officer is to hear the case alone or whether the agency itself is to hear the case with the hearing officer.

(2) **Powers of Hearing Officer.** When the agency itself hears the case the hearing officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of them to the hearing officer. When the hearing officer alone hears a case, he shall exercise all powers relating to the conduct of the hearing.

(3) **Disqualification of Hearing Officer and Agency Members.** A hearing officer or agency member shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any hearing officer or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns an agency member the issue shall be determined by the other members of the agency. Where the request concerns the hearing officer, the issue shall be determined by the agency itself if the agency itself hears the case with the hearing officer, otherwise the issue shall be determined by the hearing officer. No

agency member shall withdraw voluntarily or be subject to disqualification if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

(4) **Reporter.** The proceedings at the hearing shall be reported by a phonographic reporter or recorder, or other adequate means of assuring an accurate record.

Sec. 14. Evidence Rules. (1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(3) **Admissibility of Evidence.** The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

(4) Nothing herein shall be construed to alter the ordinary rules of burden of proof of judicial proceedings in Alaska.

Sec. 15. Evidence by Affidavit. (1) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the oppos-

ing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (2). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(2) The notice referred to in subdivision (1) shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

Sec. 16. Official Notice. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

Sec. 17. Amendment of Accusation After Submission. The agency may order amendment of the accusation after

submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

Sec. 18. (1) **Decision.** If a contested case is heard before an agency itself the hearing officer who presided at the hearing shall be present during the consideration of the case and if requested, shall assist and advise the agency. Where a contested case is heard before an agency itself, no member thereof who did not hear the evidence shall vote on the decision.

(2) **Adoption of Proposed Decision of Hearing Officer.** If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in such form that it may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record with the Secretary of State and a copy of the proposed decision shall be served by the agency on each party in the case and his attorney. The agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(3) **Procedure Upon Failure to Adopt Proposed Decision.** If the proposed decision is not adopted as provided in subdivision (2) the agency itself may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in subdivision (2) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party and his attorney as prescribed by subdivision (2). The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the

agency itself. If additional oral evidence is introduced before the agency itself no agency member may vote unless he heard the additional oral evidence.

Sec. 19. **Form of Decision: Retroactive Effect.** The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail. The decision in a primarily judicial proceeding shall have retroactive effect in the same manner as a decision of the courts of Alaska.

Sec. 20. **Effective Date of Decision.** (1) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: A reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted for a particular purpose and not to postpone judicial review.

(2) A stay of execution may be included in the decision of if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(3) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to such officer after the decision has become effective.

Sec. 21. **Defaults.** If the respondent fails to file a notice of defense or to appear at the hearing, the agency itself may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that he is entitled to the agency action sought, the agency may act without taking evidence. Nothing herein shall be construed to deprive the respondent of

the right to make any showing by way of mitigation.

Sec. 22. Reconsideration. (1) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(2) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer shall be subject to the procedure provided in Section 18. If oral evidence is introduced before the agency itself, no agency member may vote unless he heard the evidence.

Sec. 23. Petition for Reinstatement or Reduction of Penalty. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition, and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

Sec. 24. Judicial Review. (1) Judicial review by the Superior Court of any final administrative order may be had by filing a notice of appeal in accordance with applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, any such notice shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal shall not be affected by the

failure to seek reconsideration before the agency. The complete record of the proceedings, or such parts thereof as are designated by the appellant, shall be prepared by the agency; a copy shall be delivered to all parties participating in the appeal, and the original filed in Superior Court within 30 days after designation of the record, and payment by appellant of the estimated cost of preparation of the complete or designated record, or filing a corporate surety bond equal to said estimated cost. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by a hearing officer, the final decision, a transcript of all testimony and proceedings, the exhibits admitted or rejected, the written evidence, and all other documents in the case. Upon order of the Superior Court, appeals may be taken on the original record or parts thereof; the record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this Act is silent, and when not in conflict herewith.

(2) Superior Courts are empowered to enjoin at any stage of an agency proceeding agency action in excess of constitutional or statutory authority; if agency action is unlawfully withheld or unreasonably withheld, the Superior Court shall have jurisdiction to compel the agency to initiate action.

Sec. 25. Scope of Review. (1) All appeals shall be heard by the Superior Court sitting without a jury.

(2) The inquiry in such a case shall extend to the questions whether the agency has proceeded without, or in excess of jurisdiction; whether there was a fair hearing; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(3) The Court is authorized and empowered to exercise its independent judgment on the evidence and where it is claimed that the findings are not sup-

ported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; or not supported by substantial evidence in the light of the whole record.

(4) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, it may enter judgment as provided in subdivision (5) of this section remanding the case to be reconsidered in the light of such evidence; or, the court may admit such evidence at the appellate hearing without remanding the case. Superior Courts shall on appeal have the right to augment the agency record in whole or in part, even to the extent of holding a hearing *de novo*.

(5) The court shall enter judgment either setting aside, modifying, remanding, or affirming the order or decision, without limiting or controlling in any way the discretion legally vested in the agency.

(6) The Superior Court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of further appeal from the judgment, or until the expiration of the time for filing such notice; provided that no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. If further appeal is taken, the Supreme Court or the United States Circuit Court of Appeals may stay the Superior Court judgment or agency order, in its discretion. Where any final administrative order or decision is the subject of proceedings under this section, if the appeal shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of such proceedings.

Sec. 26. Continuances. The agency may grant continuances. When a hearing officer has been assigned to such

hearing, no continuance may be granted except by him for good cause shown.

Sec. 27. Contempt. If any person in proceedings before an agency disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take oath, or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceeding, the agency shall certify the facts to the Superior Court in and for the division where the proceedings are held. The court shall thereupon issue an order directing the person to appear before the court and show cause why he should not be punished as for contempt. The order and a copy of the certified statement shall be served on the person. Thereafter the court shall have jurisdiction of the matter. The same proceedings shall be had, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed a contempt in the trial of a civil action before a Superior Court.

Sec. 28. Mail Vote. The members of an agency qualified to vote on any question may vote by mail.

Sec. 29. Charge. Any sums authorized to be expended under this chapter by any agency shall be a legal charge against the appropriations of the agency.

Sec. 30. Power to Administer Oaths. In any proceedings under this chapter any agency, agency member, secretary of an agency or hearing officer has power to administer oaths and affirmations and to certify to official acts.

Sec. 31. Impartiality. The functions of hearing officers, as well as those of officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties as well as the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. Such officers, except to the extent required for the disposition of *ex parte* matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, any party directly or indirectly, except upon opportunity for

all other parties to be present. Copies of all communications with such officers shall be served upon all parties.

Sec. 32. **Repealer.** All laws inconsistent or in conflict with this Act shall be deemed repealed or amended in accord-

ance with the provisions herein.

Sec. 33. **Term "Superior Court" Includes District Courts.** Wherever herein the term "Superior Court" is used it also refers to the District Court of Alaska and its divisions for so long as the latter court has jurisdiction.

Approved April 29, 1959

CHAPTER 144

AN ACT

Pertaining to the licensing and regulation of real estate brokers and salesmen; amending Subsec. (a) of Sec. 1, Subsec. (a) (2), Subsec. (b), Subsec. (c) (1) and Subsec. (c) (2) and Subsec. (g) of Sec. 6, Sec. 7 and Subsec. (h) and Subsec. (r) of Sec. 8 and adding Subsec. (e) to Sec. 1, Ch. 154, SLA 1957; and providing for an effective date.

(H.B. 82)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Subsec. (a) of Sec. 1, Ch. 154, SLA 1957, is hereby amended to read as follows:

(a) a "real estate broker" or "broker" is a person who, for a compensation, or with the intention or in the expectation or upon the promise of receiving or collecting compensation, sells, or offers for sale, buys, or offers to buy, lists or solicits for prospective purchasers, or negotiates the purchase or sale or exchange of real estate, or negotiates loans on real estate, or leases or offers to lease, or negotiates the sale, purchase, or exchange of leases, rents, or places for rent, or collects rent from real estate, or improvements thereon, engages in the business of buying or selling established businesses for others.

Sec. 2. Sec. 1, Ch. 154, SLA 1957 is hereby amended by adding a new Subsection to read as follows:

(e) One act or transaction in consideration of compensation, by fee, commission, salary or otherwise, or with the intention or in the expectation or upon the promise of receiving or collecting a fee of the kind or nature described in the definition of a real estate broker, shall constitute the person offering or attempting to perform

the act or transaction a real estate broker within the meaning of this Act.

Sec. 3. Subsec. (2) of Subsec. (a) of Sec. 6, Ch. 154, SLA 1957, is hereby amended to read as follows:

(2) Deliver to the Commissioner a bond to the State of Alaska in a form and of a type approved by the Commission in the sum of \$5,000.00 for a broker's or associate broker's license and in the sum of \$1,000.00 for a salesman's license guaranteeing the faithful accounting and proper remission of all funds entrusted to the broker or salesman. No bond shall be required of an inactive licensee.

Sec. 4. Subsec. (b) of Sec. 6, Ch. 154, SLA 1957, is hereby amended to read as follows:

(b) **Qualifications:** Applicants for licenses shall have the following qualifications:

(1) **Broker or associate broker:**

All applicants shall be at least 21 years of age.

All applicants shall be citizens of the United States.

All applicants shall have been engaged as a licensed real estate salesman in Alaska for at least one year immediately prior to applying for a