

Senate Bill 315

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Consumer Protection)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that agency conducting contested case hearing may modify finding of historical fact made by administrative law judge assigned from Office of Administrative Hearings only if agency determines that finding is not supported by clear and convincing evidence in record.

A BILL FOR AN ACT

1
2 Relating to contested case hearings; creating new provisions; and amending ORS 183.650.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 183.650 is amended to read:

5 183.650. (1) In any contested case hearing conducted by an administrative law judge assigned
6 from the Office of Administrative Hearings, the administrative law judge shall prepare and serve on
7 the agency and all parties to the hearing a form of order, including recommended findings of fact
8 and conclusions of law. The administrative law judge shall also prepare and serve a proposed order
9 in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the require-
10 ments of ORS 183.464.

11 (2) If the administrative law judge assigned from the office will not enter the final order in a
12 contested case proceeding, and the agency modifies the form of order issued by the administrative
13 law judge in any substantial manner, the agency must identify the modifications and provide an ex-
14 planation to the parties to the hearing as to why the agency made the modifications.

15 (3) An agency conducting a contested case hearing may modify a finding of historical fact made
16 by the administrative law judge assigned from the Office of Administrative Hearings only if the
17 agency determines that the finding of historical fact made by the administrative law judge is not
18 supported by [*a preponderance of the*] **clear and convincing** evidence in the record. For the purposes
19 of this section, an administrative law judge makes a finding of historical fact if the administrative
20 law judge determines that an event did or did not occur in the past or that a circumstance or status
21 did or did not exist either before the hearing or at the time of the hearing.

22 (4) If a party seeks judicial review of an agency's modification of a finding of historical fact
23 under subsection (3) of this section, the court shall make an independent finding of the fact in dis-
24 pute by conducting a review de novo of the record viewed as a whole. If the court decides that the
25 agency erred in modifying the finding of historical fact made by the administrative law judge, the
26 court shall remand the matter to the agency for entry of an order consistent with the court's judg-
27 ment.

28 **SECTION 2.** The amendments to ORS 183.650 by section 1 of this 2007 Act apply only to
29 **contested case hearings commenced by the issuance of a notice under ORS 183.415 on or af-**
30 **ter the effective date of this 2007 Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

