

## **Chapter 11**

### Administrative Law and Government Regulation

#### **Chapter Outline**

1. Introduction
2. Administrative Law
3. Consumer Law
4. Environmental Law

#### **Chapter Objectives**

After completing this chapter, you will know:

- The purpose, types, powers, and essential functions of administrative agencies.
- How administrative agencies establish and enforce rules.
- Some of the ways in which the government protects consumers against unfair business practices and harmful products.
- The major laws regulating environmental pollution.
- The basic purpose and provisions of Superfund.

## Chapter 11 Administrative Law and Government Regulation

### Chapter Outline

- I. INTRODUCTION
  - A. A paralegal should know the purpose, types, powers, and essential functions of administrative agencies.
  - B. A paralegal should also know some of the ways in which the government protects consumers against unfair business practices and harmful products.

#### **Administering the Law**

Administrative law is one practice area that permits paralegal representation of clients. Some administrative agencies permit qualified, non-lawyers to practice before the agency. If you, as a paralegal, want to practice in a certain area of administrative law, contact the agency and inquire about its representation requirements and procedure.

- II. ADMINISTRATIVE LAW
  - A. Types of Administrative Agencies
    - i. Executive Agencies
      - 1. Executive agencies comprise the cabinet departments and the sub-agencies within those departments.
      - 2. Executive agencies are subject to the authority of the president, who has the power to appoint or remove federal officers.
    - ii. Independent Regulatory Agencies
      - 1. Independent regulatory agencies are outside the major executive departments and are more independent of presidential control.
      - 2. The officers of independent regulatory agencies serve for fixed terms and cannot be removed without just cause.
  - B. Agency Powers
    - i. Enabling Legislation
      - 1. When Congress wants to create an administrative agency, it passes *enabling legislation*.
      - 2. Enabling legislation specifies the names, purpose, function, and powers of the agency being created.
    - ii. Agency Powers and the Constitution
      - 1. Administrative agencies handle executive, legislative, and judicial functions normally associated with the three branches of government.
      - 2. The constitutional authority for Congress' delegating powers to the administrative agencies is implied in Article I, Section 8 of the U.S. Constitution.

- a. The Delegation Doctrine. Generally, courts conclude that these passages, known as the *delegation doctrine*, as the basis for **all** administrative law.
- b. Limitations on Agency Power. The three branches of government exercise certain controls over agency powers and functions.

### C. Administrative Process

- i. Rulemaking, enforcement, and adjudication constitute the three main functions of an administrative agency. This is known as the *administrative process*.
- ii. Rulemaking
  1. A major function of an administrative agency is *rulemaking*—the formulation of new regulations.
  2. When a federal agency decides to create a new rule, notice is published in the *Federal Register*.
  3. A “comment period” follows during which interested parties can express their views on the proposed rule.
  4. The final rule is also published in the *Federal Register*.
- iii. Investigation
  1. Agencies conduct investigations of the entities that they regulate.
  2. The purpose of this type of investigation is to obtain information to make sure the proposed rule is relevant; after final rules are issued, investigators monitor compliance with those rules.
- iv. Enforcement: Adjudication
  1. Most agency actions against violators are settled prior to adjudication.
    - a. Negotiated Settlements. Their purpose is to rectify the problem and eliminate the need for additional proceedings.
    - b. Formal Complaints. If a settlement cannot be reached, a formal complaint is filed with the agency. The case is adjudicated by an *administrative law judge (ALJ)*.
  2. Agency Orders
    - a. Following a hearing, the ALJ renders a decision on the case.
    - b. Either party can appeal the ALJ’s decision.
    - c. If no party appeals or if a court declines to hear the appeal, the ALJ’s decision becomes final.

### D. State Administrative Agencies

- i. State agencies play a significant regulatory role.

- ii. Commonly, a state creates an agency as a parallel to a federal agency to provide similar services on a localized basis.
- iii. If the actions of parallel federal and state agencies come into conflict, the actions of the federal agency will prevail.

E. Paralegal Practice and Administrative Agencies

- i. Some agencies permit qualified paralegals to represent and advise clients during administrative proceedings under Section 555 of the Administrative Procedure Act.

F. Administrative Law and the Paralegal

- i. The functions of administrative law permeate almost every area of legal practice.
- ii. Paralegals must be familiar with the administrative rules of both federal and state agencies.

III. CONSUMER LAW

A. Deceptive Advertising

- i. The Federal Trade Commission (FTC) prohibits *deceptive advertising*.
- ii. Deceptive advertising is where a seller misrepresented the quality, price, or availability of a certain product.

B. Labeling and Packaging Laws

- i. Packaging and labeling laws protect consumers by requiring producers to label their products accurately and truthfully.
- ii. Producers must disclose certain information (such as quantity) on product labels.

C. Sales Transactions

- i. To protect consumers, federal and state statutes and regulations regulate certain types of sales transactions.
- ii. Door-to-door sales, telephone and mail-order sales, and real estate sales are some of the regulated sales transactions.
- iii. Of growing concern is how the government can regulate Internet sales transactions so as to protect the consumer.

D. Consumer Health and Safety

- i. Federal laws and regulations governing the sale of food and drugs protect consumers.
- ii. These health and safety standards must be met by producers of foods and drugs before their products can be marketed.

E. Consumer Credit Protection

- i. The Truth-in-Lending Act (TILA)
  - 1. The TILA is basically a *disclosure act*.
  - 2. The TILA provides that a consumer can cancel a contract if a creditor fails to follow exactly the procedures required by the act.

3. One provision of TILA limits the liability of a credit card holder to \$50 per card for unauthorized charges made before the creditor is notified that the card has been lost.
- ii. Fair Credit Reporting
  1. The act applies only to debt-collection agencies.
  2. The act prohibits debt-collection practices such as contacting the consumer at his place of employment if the employer objects.
  3. The act also prohibits debt-collection agencies from contacting third parties about payment of a debt unless authorized to do so by a court.
- iii. Garnishment Proceedings
  1. *Garnishment* occurs when a creditor, after complying with state mandated procedures, legally seizes a portion of a debtor's property in the possession of a third party (usually the debtor's wages).
  2. The creditor must first obtain an *order of garnishment* from the court.
  3. Federal and state laws limit the amount of income that can be garnished each week.
  4. Federal law provides that garnishment of an employee's wages for any one indebtedness cannot be grounds for that employee's dismissal.
- iv. Consumer Law and the Paralegal
  1. Paralegals need to know about consumer law because those laws protect them as individuals.
  2. Paralegals will also undoubtedly encounter clients with claims falling under federal or state consumer-protection laws.

### **Protecting the Environment**

Environmental law is another administrative law area that requires knowledge of many different acts, both state and federal. Environmental law includes air and water pollution, toxic chemicals, and hazardous waste. It is a good thing you passed chemistry in high school.

- IV. ENVIRONMENTAL LAW
  - A. Common-Law Actions
    - i. Common-law remedies against environmental pollution originated centuries ago in England.
    - ii. A developing area of tort law, and legal practice, involves *toxic torts*—actions against toxic polluters.
  - B. Federal Regulation of the Environment

- i. Environmental Regulatory Agencies
  - 1. The most well-known agency regulating environmental law is the Environmental Protection Agency (EPA), created in 1970.
  - 2. Other federal agencies, such as the Department of the Interior, the Department of Defense, and the Nuclear Regulatory Commission also have authority to regulate specific environmental matters.
- ii. Environmental Impact Statements
  - 1. The National Environmental Policy Act (NEPA) of 1969 requires that an *environmental impact statement* (EIS) be prepared for every federal action that significantly affects the quality of the environment.
    - a. EISs have become instruments used by private citizens and consumer interest groups to challenge federal agency actions.

### C. Air Pollution

- i. Mobile and Stationary Sources of Pollution
  - 1. The Clean Air Act of 1963 covers both mobile and stationary sources of pollution.
    - a. *Mobile sources* include automobiles, sport utility vehicles, and trucks.
    - b. *Stationary sources* include manufacturing plants, electric utilities, and other non-moving sources of pollution.
- ii. Penalties for Violation of the Clean Air Act
  - 1. The EPA can assess civil penalties of up to \$25,000 per day for violations of emission limits.
  - 2. Additional fines of up to \$5,000 per day can be assessed for other violations, such as failing to maintain required records.
  - 3. Persons who provide information about violators can be paid up to \$10,000.
  - 4. Those who knowingly violate the act may face criminal penalties, including fines up to \$1 million and imprisonment for up to two years.
  - 5. Corporate officers may be subject to these penalties.

### D. Water Pollution

- i. Navigable Waters
  - 1. *Navigable waters* include coastal waters, freshwater wetlands, and lakes and streams.
  - 2. In 1972, the Clean Water Act was enacted.
  - 3. Under the Clean Water Act, violators are subject to civil and criminal penalties.
- ii. Drinking Water

1. The Safe Drinking Water Act of 1974 (amended in 1996) gives the EPA flexibility in setting regulatory standards governing drinking water.
  - iii. Ocean Dumping
    1. The Marine Protection, Research, and Sanctuaries Act of 1972 (amended in 1983) prohibits entirely the dumping of certain materials in the ocean.
    2. Violators are subject to civil and criminal penalties.
- E. Toxic Chemicals
- i. Pesticides and Herbicides
    1. Under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, pesticides and herbicides must be registered before they can be sold, and they can be used only for approved applications.
    2. Under 1996 amendments to the act, there must be a “reasonable certainty of no harm” for a pesticide to remain on the market.
    3. Violators are subject to civil and criminal penalties.
  - ii. Toxic Substances
    1. The Toxic Substances Control Act of 1976 regulates chemicals and chemical compounds known to be toxic.
    2. The EPA may require special labeling, limited use, set production quotas, or prohibit the use of a substance altogether.
  - iii. Hazardous Water
    1. Some industrial, agricultural, and household wastes pose more serious threats than others.
    2. If released into the environment, they may contaminate public drinking water.
      - a. Resource Conservation and Recovery Act (1976). This act regulates, monitors, and controls hazardous-waste disposal.
      - b. Superfund (1980). This act regulates the cleanup of disposal sites from which hazardous waste is leaking into the environment. The Superfund imposes strict liability on the *potentially responsible party* (PRP).
- F. State and Local Regulation
- i. Many states regulate the degree to which the environment may be polluted.
  - ii. A business’s proposed development may have to be altered to conform to these regulations.
  - iii. Local zoning laws also control some land use to protect the natural environment.
- G. Environmental Law and the Paralegal

- i. Paralegals who specialize in environmental law find employment with federal or state environmental agencies, local government agencies, or a corporate legal department.
- ii. Some environmental law paralegals may be involved in extensive litigation concerning environmental claims.