



RESTORING THE RIGHT TO TRIAL ACT

Summary: This model policy is designed to protect due process rights and restore the constitutional guarantee of a citizen's "day in court." It accomplishes this by allowing individuals to remove certain administrative proceedings to a court of law, including a trial by jury where appropriate. Under this policy, an individual may file a notice of removal with the trial court and serve the notice on the agency that initiated the proceedings. Once filed, all investigative, prosecutorial, and adjudicative materials held by the agency must be transferred to the court and the agency must immediately cease adjudication of the matter. An individual may demand a jury trial if the matter involves legal claims or penalties that would entitle a party to a jury trial under the state or federal constitution. This policy does not apply to proceedings that are purely internal to the government or proceedings initiated by private parties.

Restoring the Right to Trial Act

Section 1: Legislative Findings and Intent

The Legislature finds and declares that:

- (a) The right to a trial by jury is a fundamental civil liberty enshrined in the Seventh Amendment to the United States Constitution and in [State Constitution, Article X, Section X].
- (b) The proliferation of administrative adjudications has eroded access to independent courts and undermined public confidence in the impartial resolution of legal disputes.
- (c) Administrative agencies often act as prosecutor, judge, and jury, denying individuals a neutral forum and the opportunity for meaningful judicial review.
- (d) To protect due process and restore the constitutional guarantee of a citizen's "day in court," individuals must be given the right to remove certain administrative proceedings to a court of law for a trial de novo, including a trial by jury where appropriate.

Section 2: Right to Remove to Court of Law

- (a) In any contested administrative proceeding initiated by a state agency against a private party, the private party shall have the right to remove the matter to a court of competent jurisdiction for a trial de novo.
- (b) The right to removal may be exercised:



- (1) Within XX days of receiving notice of the commencement of an administrative adjudication;
 - (2) By filing a notice of removal with the appropriate trial court and serving the notice on the agency in accordance with the court rules of procedure;
 - (3) Without prejudice to any constitutional or statutory defenses that may be raised in the judicial forum.
- (c) Upon the filing of a notice of removal:
- (1) The agency shall immediately cease adjudication of the matter;
 - (2) All investigative, prosecutorial, and adjudicative materials held by the agency shall be transferred to the court;
 - (3) The matter shall proceed as if originally filed in that court, subject to all rules of civil procedure and evidence.
- (d) The notice of the commencement of an administrative adjudication shall include in writing the allegations against the private party, and a detailed description of the party's rights, including the complete text of this Act.

Section 3: Right to Jury Trial Preserved

- (a) If the matter involves legal claims or penalties that would entitle a party to a jury trial under the state or federal constitution, the private party may demand a jury trial in the court of law.
- (b) The court shall not defer to the agency's legal interpretations, factual findings, or policy judgments. The court shall decide the matter independently and de novo.

Section 4: Applicability and Exceptions

- (a) This Act applies to all administrative adjudications initiated after its effective date.
- (b) This Act does not apply to proceedings purely internal to the government (e.g., employee discipline).
- (c) This Act does not apply to administrative proceedings commenced by private parties (e.g., applications for a government benefit, application for licensure).

Section 5: Definitions

For purposes of this Act, "commencement of an administrative adjudication" means, after the conclusion of an investigation into a private party an agency refuses to dismiss the matter, requiring a proceeding in which the legal rights, duties, or



privileges of the party are required by constitutional law or statute to be determined only after an opportunity for hearing.

Section 6: Severability

If any provision of this Act or its application is held to be invalid, the remainder of the Act or the application of the provision to other persons or circumstances shall not be affected.

Section 7: Effective Date

This Act shall take effect on [insert date], and shall apply to all administrative proceedings initiated on or after that date.

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LegalPolicy@PacificLegal.org | PacificLegal.org/legislation