

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

A Bill

Act 778 of 1999
SENATE BILL 489

5 By: Senators D. Malone, Harriman, Brown
6 By: Representatives Hathorn, Creekmore
7

For An Act To Be Entitled

8
9
10 "AN ACT TO AMEND ARKANSAS CODE § 25-15-212 REGARDING
11 THE SERVICE OF PROCESS REQUIRED UNDER THE
12 ADMINISTRATIVE PROCEDURES ACT; AND FOR OTHER
13 PURPOSES. "

Subtitle

14
15
16 "TO AMEND ARKANSAS CODE § 25-15-212
17 REGARDING THE SERVICE OF PROCESS
18 REQUIRED UNDER THE ADMINISTRATIVE
19 PROCEDURES ACT. "

20
21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code 25-15-212 is amended to read as follows:

25 "25-15-212. Administrative adjudication - Judicial review.

26 (a) In cases of adjudication, any person, except an inmate under
27 sentence to the custody of the Department of Correction, who considers himself
28 injured in his person, business, or property by final agency action shall be
29 entitled to judicial review of the action under this subchapter. Nothing in
30 this section shall be construed to limit other means of review provided by
31 law.

32 (b)(1) Proceedings for review shall be instituted by filing a petition,
33 within thirty (30) days after service upon petitioner of the agency's final
34 decision, in:

35 (A) The circuit court of any county in which the petitioner
36 resides or does business; or

1 (B) The Circuit Court of Pulaski County.

2 (2) Copies of the petition shall be served upon the agency and
3 all other parties of record ~~by personal delivery or by mail~~ in accordance with
4 the Arkansas Rules of Civil Procedure.

5 (3) The court, in its discretion, may permit other interested
6 persons to intervene.

7 (c) The filing of the petition does not automatically stay enforcement
8 of the agency decision, but the agency or reviewing court may do so upon such
9 terms as may be just. However, on review of disciplinary orders issued by
10 professional licensing boards governing professions of the healing arts, the
11 reviewing court, only after notice and hearing, may issue all necessary and
12 appropriate process to postpone the effective date of an agency action or to
13 preserve status or rights pending conclusion of review proceedings.

14 (d)(1) Within thirty (30) days after service of the petition or within
15 such further time as the court may allow, but not exceeding an aggregate of
16 ninety (90) days, the agency shall transmit to the reviewing court the
17 original or a certified copy of the entire record of the proceeding under
18 review.

19 (2) The cost of the preparation of the record shall be borne by
20 the agency. However, the cost of the record shall be recovered from the
21 appealing party if the agency is the prevailing party.

22 (3) By stipulation of all parties to the review proceeding, the
23 record may be shortened. Any party unreasonably refusing to stipulate to limit
24 the record may be taxed by the court for the additional costs.

25 (4) The court may require or permit subsequent corrections or
26 additions to the record.

27 (e) If review proceedings have been instituted in two (2) or more
28 circuit courts with respect to the same order, the agency concerned shall file
29 the record in the court in which a proceeding was first instituted. The other
30 courts in which the proceedings are pending shall thereupon transfer them to
31 the court in which the record has been filed.

32 (f) If, before the date set for hearing, application is made to the
33 court for leave to present additional evidence and the court finds that the
34 evidence is material and that there were good reasons for failure to present
35 it in the proceeding before the agency, the court may order that the
36 additional evidence be taken before the agency upon any conditions which may

1 be just. The agency may modify its findings and decision by reason of the
2 additional evidence and shall file that evidence and any modifications, new
3 findings, or decisions with the reviewing court.

4 (g) The review shall be conducted by the court without a jury and shall
5 be confined to the record, except that in cases of alleged irregularities in
6 procedure before the agency, not shown in the record, testimony may be taken
7 before the court. The court shall, upon request, hear oral argument and
8 receive written briefs.

9 (h) The court may affirm the decision of the agency or remand the case
10 for further proceedings. It may reverse or modify the decision if the
11 substantial rights of the petitioner have been prejudiced because the
12 administrative findings, inferences, conclusions, or decisions are:

- 13 (1) In violation of constitutional or statutory provisions;
- 14 (2) In excess of the agency's statutory authority;
- 15 (3) Made upon unlawful procedure;
- 16 (4) Affected by other error or law;
- 17 (5) Not supported by substantial evidence of record; or
- 18 (6) Arbitrary, capricious, or characterized by abuse of

19 discretion."
20

21 SECTION 2. All provisions of this act of a general and permanent nature
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
23 Revision Commission shall incorporate the same in the Code.
24

25 SECTION 3. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.
30

31 SECTION 4. All laws and parts of laws in conflict with this act are
32 hereby repealed.
33
34

35 APPROVED: 3/22/1999
36