

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

SENATE BILL 15

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5 By: Senator Hoofman
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For An Act To Be Entitled

8
9 AN ACT TO AMEND ARKANSAS CODE 25-15-212 TO PROVIDE FOR
10 JUDICIAL HEARINGS DE NOVO FROM ALL FINAL AGENCY
11 ADJUDICATIONS; AND FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO AMEND ARKANSAS CODE 25-15-212
15 TO PROVIDE FOR JUDICIAL HEARINGS DE NOVO
16 FROM ALL FINAL AGENCY ADJUDICATIONS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code 25-15-212 is amended to read as follows:
22 25-15-212. Administrative adjudication - Judicial review.

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

29 (b)(1) Proceedings for ~~review~~ a judicial hearing shall be instituted by
30 filing a petition within thirty (30) days after service upon petitioner of the
31 agency's final decision in:

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

34 (B) The Circuit Court of Pulaski County.

35 (2) Copies of the petition shall be served upon the agency and
36 all other parties of record in accordance with the Arkansas Rules of Civil

1 Procedure.

2 (3) In its discretion, the court may permit other interested
3 persons to intervene.

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

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

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

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

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

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

31 ~~(f) If before the date set for hearing, application is made to the~~
32 ~~court for leave to present additional evidence and the court finds that the~~
33 ~~evidence is material and that there were good reasons for failure to present~~
34 ~~it in the proceeding before the agency, the court may order that the~~
35 ~~additional evidence be taken before the agency upon any conditions which may~~
36 ~~be just. The agency may modify its findings and decision by reason of the~~

1 ~~additional evidence and shall file that evidence and any modifications, new~~
2 ~~findings, or decisions with the reviewing court.~~

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

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

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

18 ~~discretion.~~ The court is authorized to enter findings and orders consistent
19 with the evidence presented and within the statutory authority of the agency
20 from which the appeal was taken.

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