

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 429

4
5 By: Senator Mahony
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For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ADMINISTRATIVE PROCEDURE ACT; AND FOR OTHER PURPOSES.

Subtitle

11
12 TO AMEND VARIOUS PROVISIONS OF THE
13 ADMINISTRATIVE PROCEDURE ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code 25-15-202(4), regarding definitions in the
20 Administrative Procedure Act, is amended to read as follows:

21 (4)(A) "Rule" means any agency statement of general applicability and
22 future effect that implements, interprets, or prescribes law or policy, or
23 describes the organization, procedure, or practice of any agency and
24 includes, but is not limited to the amendment or repeal of a prior rule.

25 (B) "Rule" does not mean:

26 (i) Statements concerning the internal management of an
27 agency and which do not affect the private rights or procedures available to
28 the public;

29 (ii) Declaratory rulings issued pursuant to § 25-15-206;

30 or

31 (iii) Intra-agency memoranda;
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33 SECTION 2. Arkansas Code 25-15-203(b) is amended to read as follows:

34 (b) No agency rule, order, or decision shall be valid or effective
35 against any person or party, nor may it be invoked by the agency for any
36 purpose, until it has been filed and made available for public inspection as

1 required in this subchapter. This provision shall not apply in favor of any
 2 person or party with actual knowledge of an agency rule, order, or decision.

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 4 SECTION 3. Arkansas Code 25-15-204 is amended to read as follows:
 5 25-15-204. Rules - Procedure for adoption.

6 (a) Prior to the adoption, amendment, or repeal of any rule, the
 7 agency shall:

8 (1) Give at least thirty (30) days' notice of its intended
 9 action. The thirty-day period shall begin on the first day of the publication
 10 of notice.

11 (A) The notice shall include a statement of the terms or
 12 substance of the intended action, or a description of the subjects and issues
 13 involved, and the time, the place where, and the manner in which interested
 14 persons may present their views thereon.

15 (B) The notice shall be mailed to any person specified by
 16 law and to all persons who shall have requested advance notice of rulemaking
 17 proceedings.

18 (C) ~~The~~ Unless otherwise provided by law, the notice shall
 19 be published ~~as specified by law or, if no manner of publication is so~~
 20 ~~specified, then in those~~ in a newspaper ~~newspapers~~ of general daily
 21 circulation for seven (7) consecutive days and, where appropriate, in those
 22 trade, industry, or professional publications which the agency may select;

23 (2)(A) Afford all interested persons reasonable opportunity to
 24 submit written data, views, or arguments, orally or in writing.

25 (B) Opportunity for oral hearing must be granted if
 26 requested by twenty-five (25) persons, by a governmental subdivision or
 27 agency, or by an association having no fewer than twenty-five (25) members.

28 (C) The agency shall fully consider all written and oral
 29 submissions respecting the proposed rule before finalizing the language of
 30 the proposed rule and filing the proposed rule as required by subsection (d)
 31 of this section.

32 (D) Upon adoption of a rule, the agency, if requested to
 33 do so by an interested person either prior to adoption or within thirty (30)
 34 days thereafter, shall issue a concise statement of the principal reasons for
 35 and against its adoption, incorporating therein its reasons for overruling
 36 the considerations urged against its adoption.

1 (E) Where rules are required by law to be made on the
2 record after opportunity for an agency hearing, the provisions of that law
3 shall apply in place of this subdivision.

4 (b) If an agency finds that imminent peril to the public health,
5 safety, or welfare requires adoption of a rule upon fewer than ~~twenty (20)~~
6 thirty (30) days' notice and states in writing its reasons for that finding,
7 it may proceed without prior notice or hearing, or upon any abbreviated
8 notice and hearing that it may choose, to adopt an emergency rule. The rule
9 may be effective for no longer than one hundred twenty (120) days.

10 (c) Every agency shall accord any person the right to petition for the
11 issuance, amendment, or repeal of any rule. Within thirty (30) days after
12 submission of a petition, the agency shall either deny the petition, stating
13 in writing its reasons for the denial, or shall initiate rule-making
14 proceedings.

15 (d)(1) Every agency, including those exempted under § 25-15-202, shall
16 file with the Secretary of State, the Arkansas State Library, and the Bureau
17 of Legislative Research a copy of each rule and regulation adopted by it and
18 a statement of financial impact for the rule or regulation.

19 (2) The Secretary of State shall keep a register of the rules
20 open to public inspection, and it shall be a permanent register.

21 (3) Each agency shall provide its regulations to the Bureau of
22 Legislative Research in an electronic format acceptable to the bureau. The
23 bureau shall place the agency regulations in the General Assembly's internet
24 web site.

25 (4)(A) The scope of the financial impact statement shall be
26 determined by the agency, but shall include, at a minimum, the estimated cost
27 of complying with the rule and the estimated cost for the agency to implement
28 the rule.

29 (B) If the agency has reason to believe that the
30 development of a financial impact statement will be so speculative as to be
31 cost prohibitive, the agency shall submit a statement and explanation to that
32 effect.

33 (C) If the purpose of a state agency rule or regulation is
34 to implement a federal rule or regulation, the financial impact statement
35 shall be limited to any incremental additional cost of the state rule or
36 regulation as opposed to the federal rule or regulation.

1 (e) Each rule adopted by an agency shall be effective ten (10) days
 2 after filing unless a later date is specified by law or in the rule itself.
 3 However, an emergency rule may become effective immediately upon filing, or
 4 at a stated time less than ten (10) days thereafter, if the agency finds that
 5 this effective date is necessary because of imminent peril to the public
 6 health, safety, or welfare. The agency's finding and a brief statement of the
 7 reasons therefor shall be filed with the rule. The agency shall take
 8 appropriate measures to make emergency rules known to the persons who may be
 9 affected by them.

10 (f)(1) No rule adopted after June 30, 1967, shall be valid unless
 11 adopted and filed in substantial compliance with this section.

12 (2) An action to contest the validity of a rule on the grounds
 13 of noncompliance with any provision of this subchapter shall be commenced
 14 within two (2) years after the effective date of the rule.

15 ~~(g) [Repealed.]~~

16 ~~(h)~~ (g) In any proceeding brought which questions the existence of
 17 imminent peril to the public health, safety, or welfare, a written finding by
 18 the agency that adoption of any emergency rule was necessary to avoid the
 19 loss of federal funding or certification shall establish a prima facie case
 20 of the existence of imminent peril to the public health, safety, or welfare
 21 and the burden of proof shall shift to the challenger to rebut the existence
 22 of the condition by a preponderance of the evidence.

23
 24 SECTION 4. Arkansas Code 25-15-205, concerning The Arkansas Register,
 25 is amended by adding an additional subsection to read as follows:

26 (e)(1) The Secretary of State shall publish the rules contained in
 27 "The Arkansas Register" on its internet web site.

28 (2) The Secretary of State may omit from publication on its
 29 internet web site any rules:

30 (A) That are published on an agency, board, or commission
 31 internet web site and are accessible at no cost to the public; or

32 (B) In which publication would be unduly cumbersome,
 33 expensive, or otherwise, so long as its internet web site indicates where and
 34 how a copy of the omitted materials may be obtained.

35
 36 SECTION 5. Arkansas Code 25-15-212, concerning judicial review, is

1 amended by adding an additional subsection to read as follows:

2 (i) Any agency order which is affirmed or affirmed in part by the
3 court shall be a final judgment subject to writ of garnishment or execution
4 to the extent it is affirmed.

5
6 SECTION 6. Arkansas Code 25-15-213 is amended to read as follows:
7 25-15-213. Hearings generally.

8 In every case of adjudication, and in cases of rule making in which
9 rules are required by law to be made on the record after opportunity for an
10 agency hearing, and in cases of rule making in which, pursuant to § 25-15-
11 204(a)(2), the agency shall direct that oral testimony be taken or a hearing
12 held:

13 (1) Any person compelled to appear before any agency or representative
14 thereof shall have the right to be accompanied and advised by counsel. Every
15 party shall have the right to appear in person or by counsel.

16 (2)(A) There shall preside at the hearing:

- 17 (i) The agency;
- 18 (ii) One (1) or more members of the agency; or
- 19 (iii) One (1) or more examiners or referees designated by

20 the agency.

21 (B) All presiding officers and all officers participating in
22 decisions shall conduct themselves in an impartial manner and may at any time
23 withdraw if they deem themselves disqualified.

24 (C) Any party may file an affidavit of personal bias or
25 disqualification, which affidavit shall be ruled on by the agency and granted
26 if timely, sufficient, and filed in good faith.

27 (3)(A) Presiding officers shall have power, pursuant to published
28 procedural rules of the agency:

- 29 (i) To issue subpoenas ~~if the agency is authorized by law~~
30 ~~to issue them;~~
- 31 (ii) To administer oaths and affirmations;
- 32 (iii) To maintain order;
- 33 (iv) To rule upon all questions arising during the course
34 of a hearing or proceeding;
- 35 (v) To permit discovery by deposition or otherwise;
- 36 (vi) To hold conferences for the settlement or

1 simplification of issues;

2 (vii) To make or recommend decisions; and

3 (viii) Generally to regulate and guide the course of the
4 pending proceeding.

5 (B) In any proceeding before any agency, if any person refuses
6 to respond to a subpoena, or refuses to take the oath or affirmation as a
7 witness or thereafter refuses to be examined, or refuses to obey any lawful
8 order of an agency contained in its decision rendered after hearing, the
9 agency or the presiding officer of the agency hearing may apply to the
10 circuit court of the county where the proceedings were held or are being held
11 or to the circuit court of the county where a petition for judicial review
12 was filed for an order directing that person to take the requisite action or
13 to otherwise comply with the order of the agency. The court shall issue the
14 order in its discretion. Should any person willfully fail to comply with an
15 order so issued, the court shall punish him as for contempt.

16 (4) Except as otherwise provided by law, the proponent of a rule or
17 order shall have the burden of proof. Irrelevant, immaterial, and unduly
18 repetitious evidence shall be excluded. Any other oral or documentary
19 evidence, not privileged, may be received if it is of a type commonly relied
20 upon by reasonably prudent men in the conduct of their affairs. Objections to
21 evidentiary offers may be made and shall be noted of record. When a hearing
22 will be expedited and the interests of the parties will not be substantially
23 prejudiced, any part of the evidence may be received in written form.

24 (5) Parties shall have the right to conduct such cross examination as
25 may be required for a full and true disclosure of the facts.

26 (6) Official notice may be taken of judicially cognizable facts and of
27 generally recognized technical or scientific facts within the agency's
28 specialized knowledge. Parties shall be notified of material so noticed,
29 including any staff memoranda or data, and shall be afforded a reasonable
30 opportunity to show the contrary.

31 (7)(A) Every agency that has the authority to conduct a hearing which
32 is subject to this section may issue subpoenas and bring before the agency as
33 a witness any person in this state.

34 (B) The subpoena may require the witness to bring any book,
35 writing, or other thing under the person's control which the person is
36 required by law to produce in evidence.

1 (C) Service of the subpoena shall be in accordance with law or
2 rule for the service of subpoenas in civil cases.

3 (D)(i) Arkansas Code 25-15-213(7) is intended to be supplemental
4 and add the power to issue subpoenas to the various agencies which do not
5 have the power to do so; and

6 (iii) This provision shall not repeal any law or part of
7 laws now in existence.

8
9 SECTION 7. Arkansas Code 25-15-214 is amended to read as follows:
10 25-15-214. Failure of agency to act - Action by injured party.

11 In any case of rule making or adjudication, if an agency shall
12 unlawfully, unreasonably, or capriciously fail, refuse, or delay to act, any
13 person who considers himself injured in his person, business, or property by
14 the failure, refusal, or delay may bring suit in the ~~chancery~~ chancery circuit court
15 of any county in which he resides or does business, or in the ~~Chancery~~
16 Circuit Court of Pulaski County, for an order commanding the agency to act.

17
18 SECTION 8. Arkansas Code Title 25, Chapter 15, Subchapter 2 is amended
19 by adding additional sections to read as follows:

20 25-15-215. Model Rules.

21 (a)(1) The Attorney General shall publish model rules of procedure for
22 use by agencies.

23 (2) The model rules shall include general functions and duties
24 commonly performed by agencies.

25 (b)(1) Each agency created after the effective date of this act shall
26 adopt, in accordance with the provisions of this subchapter, those model
27 rules that are practicable.

28 (2) Any agency that adopts a rule of procedure that differs from
29 the model rule shall, in conjunction with adopting the rule of procedure,
30 state the reason why the relevant portions of the model rules are
31 impracticable.

32
33 25-15-216. Review of Agency Rules.

34 (a) As soon as is practicable after each regular session of the
35 General Assembly, each agency shall review any newly enacted laws to
36 determine whether:

1 (1) Any existing rule should be repealed or amended; or

2 (2) Any new rule should be adopted.

3 (b) At the conclusion of each review, the agency shall adopt a written
 4 report of the result of the review.

5 (c) A copy of each report shall be maintained as a public record by
 6 the agency.

7

8 25-15-217. Alternative Sanctions.

9 (a)(1) Each agency which may suspend, revoke, or deny a license for
 10 acts or omissions, or other conduct as provided by law may impose alternative
 11 sanctions set forth in subsection (b) of this section.

12 (2) The penalties set forth in subsection (b) of this section
 13 shall be supplemental to any agency's authority to impose penalties upon any
 14 person or entity under the board or commission's jurisdiction.

15 (b) Each agency may impose on any person or entity under the agency's
 16 jurisdiction:

17 (1) A monetary penalty not to exceed five hundred dollars (\$500)
 18 for each violation;

19 (2) A requirement that the person complete appropriate education
 20 programs, courses, or both;

21 (3) A requirement that the person or entity successfully
 22 complete:

23 (A) A licensing examination;

24 (B) A credentialing examination; or

25 (C) Any other examination required in order to obtain a
 26 permit, license, registration, or credential;

27 (4) Conditions or restrictions upon regulated activities of the
 28 holder of a license, permit, certificate, credential, registration, or other
 29 authority; and

30 (5) Other requirements or penalties as may be appropriate under
 31 the circumstances of the case and which would achieve the agency's desired
 32 disciplinary purposes, but which would not impair the public health and
 33 welfare.

34 (c) The agency may file suit to collect any monetary penalty assessed
 35 pursuant to this subchapter if the penalty is not paid within the time
 36 prescribed by the agency, in either the Circuit Court of Pulaski County or

1 the circuit court of any county in which the person or entity under the
2 agency's jurisdiction:

- 3 (1) Resides; or
- 4 (2) Does business.

5 (d) Upon imposition of a sanction against a person or entity under the
6 agency's jurisdiction, the agency may order that the license, permit,
7 certification, credential, or registration be suspended until the person or
8 entity has complied in full with all applicable sanction imposed pursuant to
9 this section.

10 (e)(1) Each violation shall constitute a separate violation.

11 (2) The power and authority of the agency to impose a sanction
12 authorized in this section shall not be affected by any other civil or
13 criminal proceeding concerning the same violation.

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