

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
4

As Engrossed: S3/26/01

A Bill

SENATE BILL 837

5 By: Senator Faris
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ADMINISTRATIVE PROCEDURE ACT; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 TO AMEND VARIOUS PROVISIONS OF THE
15 ADMINISTRATIVE PROCEDURE ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code 25-15-202(4), regarding definitions in the
21 Administrative Procedure Act, is amended to read as follows:

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

26 (B) "Rule" does not mean:

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

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

31 or

32 (iii) Intra-agency memoranda;
33

34 SECTION 2. Arkansas Code 25-15-203(b) is amended to read as follows:

35 (b) No agency rule, order, or decision shall be valid or effective
36 against any person or party, nor may it be invoked by the agency for any

1 purpose, until it has been filed and made available for public inspection as
2 required in this subchapter. This provision shall not apply in favor of any
3 person or party with actual knowledge of an agency rule, order, or decision.
4

5 SECTION 3. Arkansas Code 25-15-204 is amended to read as follows:

6 25-15-204. Rules - Procedure for adoption.

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

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

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

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

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

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

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

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

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

1 the considerations urged against its adoption.

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

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

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

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

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

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

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

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

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

1 regulation as opposed to the federal rule or regulation.

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

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

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

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

21
22 SECTION 4. Arkansas Code 25-15-205, concerning The Arkansas Register,
23 is amended by adding an additional subsection to read as follows:

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

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

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

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

33 (3) The Secretary of State may adopt regulations implementing
34 the provisions of this section including, but not limited to, requiring the
35 submission of rules in an acceptable electronic format.

36

1 SECTION 5. Arkansas Code 25-15-212, concerning judicial review, is
2 amended by adding an additional subsection to read as follows:

3 (i) Any agency order which is affirmed or affirmed in part by the
4 court shall be a final judgment subject to writ of garnishment or execution
5 to the extent it is affirmed.
6

7 SECTION 6. Arkansas Code 25-15-213 is amended to read as follows:
8 25-15-213. Hearings generally.

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

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

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

18 (i) The agency;

19 (ii) One (1) or more members of the agency; or

20 (iii) One (1) or more examiners or referees designated by
21 the agency.

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

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

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

30 (i) To issue subpoenas *if the agency is authorized by law*
31 *to issue them;*

32 (iv) To rule upon all questions arising during the course
33 of a hearing or proceeding;

34 (v) To permit discovery by deposition or otherwise;

35 (vi) To hold conferences for the settlement or
36 simplification of issues;

- 1 (vii) To make or recommend decisions; and
- 2 (viii) Generally to regulate and guide the course of the
- 3 pending proceeding.

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

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

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

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

30

31 SECTION 7. Arkansas Code 25-15-214 is amended to read as follows:
 32 25-15-214. Failure of agency to act - Action by injured party.

33 In any case of rule making or adjudication, if an agency shall
 34 unlawfully, unreasonably, or capriciously fail, refuse, or delay to act, any
 35 person who considers himself injured in his person, business, or property by
 36 the failure, refusal, or delay may bring suit in the ~~chancery~~ circuit court

1 of any county in which he resides or does business, or in the ~~Chancery~~
2 Circuit Court of Pulaski County, for an order commanding the agency to act.

3
4 SECTION 8. Arkansas Code Title 25, Chapter 15, Subchapter 2 is amended
5 by adding additional sections to read as follows:

6 25-15-215. Model Rules.

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

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

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

14 (2) Any agency that adopts a rule of procedure that differs from
15 the model rule shall, in conjunction with adopting the rule of procedure,
16 state the reason why the relevant portions of the model rules are
17 impracticable.

18
19 25-15-216. Review of Agency Rules.

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

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

24 (2) Any new rule should be adopted.

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

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

29
30 25-15-217. Alternative Sanctions.

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

34 (2) The penalties set forth in subsection (b) of this section
35 shall be supplemental to any agency's authority to impose penalties upon any
36 person or entity under the agency's jurisdiction.

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

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

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

7 (3) A requirement that the person or entity successfully
8 complete:

9 (A) A licensing examination;

10 (B) A credentialing examination; or

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

13 (4) Conditions or restrictions upon regulated activities of the
14 holder of a license, permit, certificate, credential, registration, or other
15 authority; and

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

20 (c) The agency may file suit to collect any monetary penalty assessed
21 pursuant to this subchapter if the penalty is not paid within the time
22 prescribed by the agency, in either the Circuit Court of Pulaski County or
23 the circuit court of any county in which the person or entity under the
24 agency's jurisdiction:

25 (1) Resides; or

26 (2) Does business.

27 (d) Upon imposition of a sanction against a person or entity under the
28 agency's jurisdiction, the agency may order that the license, permit,
29 certification, credential, or registration be suspended until the person or
30 entity has complied in full with all applicable sanctions imposed pursuant to
31 this section.

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

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

36 /s/ Fari s