

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 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 1335

4
5 By: Representative J. Martin
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For An Act To Be Entitled

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9 AN ACT TO AMEND ARKANSAS CODE § 25-15-212 TO
10 PROVIDE FOR DE NOVO REVIEW FROM AN ADMINISTRATIVE
11 ADJUDICATION; AND FOR OTHER PURPOSES.
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Subtitle

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14 AN ACT TO PROVIDE FOR DE NOVO REVIEW
15 FROM AN ADMINISTRATIVE ADJUDICATION.
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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 adjudication, any person, except an inmate under
24 sentence to the custody of the Department of Correction, who considers
25 himself or herself injured in his or her person, business, or property by
26 final agency action shall be entitled to judicial review of the action under
27 this subchapter. Nothing in this section shall be construed to limit other
28 means of review provided by law.

29 (b)(1) Proceedings for review shall be instituted by filing a
30 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
33 petitioner resides or does business; or

34 (B) Pulaski County Circuit Court.

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 automatically stay enforcement
 5 of the agency decision, but the agency or reviewing court may do so upon such
 6 terms as may be just. However, on review of disciplinary orders issued by
 7 professional licensing boards governing professions of the healing arts, the
 8 reviewing court, only after notice and hearing, may issue all necessary and
 9 appropriate process to postpone the effective date of an agency action or to
 10 preserve status or rights pending conclusion of review proceedings.

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

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

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

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

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

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

1 (g)(1) If a trial de novo is requested in the petition for review, the
2 court shall conduct a hearing without a jury.

3 (2) If a trial de novo is not requested in the petition for
4 review, The the review shall be conducted by the court without a jury and
5 shall be confined to the record, except that in cases of alleged
6 irregularities in procedure before the agency not shown in the record,
7 testimony may be taken before the court.

8 (3) The court shall, upon request, hear oral argument and
9 receive written briefs.

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

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

20 discretion.

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

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