

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

# A Bill

SENATE BILL 489

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

## For An Act To Be Entitled

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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

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

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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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."
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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.

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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.

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32 hereby repealed.

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