

Senate Engrossed

administrative review of agency decisions

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 281

SENATE BILL 1063

AN ACT

AMENDING SECTIONS 12-910 AND 28-3317, ARIZONA REVISED STATUTES; RELATING
TO ADMINISTRATIVE REVIEWS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-910, Arizona Revised Statutes, is amended to
3 read:

4 12-910. Scope of review

5 A. An action to review a final administrative decision shall be
6 heard and determined with convenient speed. If requested by a party to an
7 action within thirty days after filing a notice of appeal, the court shall
8 hold an evidentiary hearing, including testimony and argument, to the
9 extent necessary to make the determination required by subsection ~~E~~ F of
10 this section. The court may hear testimony from witnesses who testified
11 at the administrative hearing and witnesses who were not called to testify
12 at the administrative hearing.

13 B. Relevant and admissible exhibits and testimony that were not
14 offered during the administrative hearing shall be admitted, and
15 objections that a party failed to make to evidence offered at the
16 administrative hearing shall be considered, unless either of the following
17 is true:

18 1. The exhibit, testimony or objection was withheld for purposes of
19 delay, harassment or other improper purpose.

20 2. Allowing admission of the exhibit or testimony or consideration
21 of the objection would cause substantial prejudice to another party.

22 C. For review of final administrative decisions of agencies that
23 are exempt from sections 41-1092.03, ~~through~~ 41-1092.04, 41-1092.05,
24 41-1092.06, 41-1092.07, 41-1092.08, 41-1092.09, 41-1092.10 AND 41-1092.11,
25 pursuant to section 41-1092.02, the trial shall be de novo if trial de
26 novo is demanded in the notice of appeal or motion of an appellee other
27 than the agency and if a hearing was not held by the agency or the
28 proceedings before the agency were not stenographically reported or
29 mechanically recorded so that a transcript might be made. On demand of
30 any party, if a trial de novo is available under this section, it may be
31 with a jury, except that a trial of an administrative decision under
32 section 25-522 shall be to the court.

33 D. FOR REVIEW OF FINAL ADMINISTRATIVE DECISIONS OF AGENCIES THAT
34 REGULATE A PROFESSION OR OCCUPATION PURSUANT TO TITLE 32, TITLE 36,
35 CHAPTER 4, ARTICLE 6, TITLE 36, CHAPTER 6, ARTICLE 7 OR TITLE 36, CHAPTER
36 17, THE TRIAL SHALL BE DE NOVO IF TRIAL DE NOVO IS DEMANDED IN THE NOTICE
37 OF APPEAL OR MOTION OF AN APPELLEE OTHER THAN THE AGENCY.

38 ~~D~~. E. The record in the superior court shall consist of the record
39 of the administrative proceeding, and the record of any evidentiary
40 hearing, or the record of the trial de novo.

41 ~~E~~. F. After reviewing the administrative record and supplementing
42 evidence presented at the evidentiary hearing, the court may affirm,
43 reverse, modify or vacate and remand the agency action. The court shall
44 affirm the agency action unless the court concludes that the agency's
45 action is contrary to law, is not supported by substantial evidence, is

1 arbitrary and capricious or is an abuse of discretion. In a proceeding
2 brought by or against the regulated party, the court shall decide all
3 questions of law, including the interpretation of a constitutional or
4 statutory provision or a rule adopted by an agency, without deference to
5 any previous determination that may have been made on the question by the
6 agency. IN A PROCEEDING BROUGHT BY OR AGAINST THE REGULATED PARTY, THE
7 COURT SHALL DECIDE ALL QUESTIONS OF FACT WITHOUT DEFERENCE TO ANY PREVIOUS
8 DETERMINATION THAT MAY HAVE BEEN MADE ON THE QUESTION BY THE AGENCY.
9 Notwithstanding any other law, this subsection applies in any action for
10 judicial review of any agency action that is authorized by law.

11 ~~F.~~ G. Notwithstanding subsection ~~F~~ F of this section, if the
12 action arises out of title 20, chapter 15, article 2, the court shall
13 affirm the agency action unless after reviewing the administrative record
14 and supplementing evidence presented at the evidentiary hearing the court
15 concludes that the action is not supported by substantial evidence, is
16 contrary to law, is arbitrary and capricious or is an abuse of discretion.

17 ~~G.~~ H. This section does not apply to any agency action by an
18 agency that is created pursuant to article XV, Constitution of Arizona.

19 Sec. 2. Section 28-3317, Arizona Revised Statutes, is amended to
20 read:

21 28-3317. Appeal

22 A. Unless the cancellation or revocation is mandatory under this
23 chapter, a person who is denied a license or whose license is canceled,
24 suspended or revoked by the department may seek judicial review pursuant
25 to title 12, chapter 7, article 6, except that section 12-910, subsections
26 A, B, ~~D~~ and E AND F do not apply.

27 B. The court shall expedite the disposition of appeals pursuant to
28 this section.

29 C. The court hearing and determination shall extend to all
30 questions of law and fact presented by the entire record before the
31 court. The court shall not hear new or additional evidence in support of
32 or in opposition to a finding, order, determination or decision of the
33 department, except in cases in which, in the discretion of the court,
34 justice demands the admission of new or additional evidence.

APPROVED BY THE GOVERNOR APRIL 26, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2021.