

Administrative Procedures Act

25-15-201. Title.

This subchapter shall be known and cited as the “Arkansas Administrative Procedure Act.”

25-15-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Adjudication” means agency process for the formulation of an order;
- (2)
 - (A) “Agency” means each board, commission, department, officer, or other authority of the government of the State of Arkansas, whether or not within, or subject to review by, another agency, except the General Assembly, the courts, and Governor.
 - (B) The word “agency” shall include the Division of Child Care and Early Childhood Education of the Department of Human Services and the Child Care Appeal Review Panel for purposes of administrative appeal.
 - (C) The word “agency” shall not include the Arkansas Public Service Commission, the Arkansas Pollution Control and Ecology Commission, the Workers’ Compensation Commission, and the Arkansas Employment Security Department, it being determined by the General Assembly that the existing laws governing those agencies provide adequate administrative procedures for those agencies.
 - (D) Nothing in this subchapter shall be construed to repeal delegations of authority as provided by law;
- (3) “License” includes any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;
- (4) “Licensing” means any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license;
- (5) “Order” means the final disposition of an agency in any matter other than rule making, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing;
- (6) “Party” means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding;
- (7) “Person” means any individual, partnership, corporation, association, or public or private organization of any character;
- (8)
 - (A) “Rule” means any agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of any agency and includes, but is not limited to, the amendment or repeal of a prior rule.
 - (B) “Rule” does not mean:

- (i) Statements concerning the internal management of an agency and which do not affect the private rights or procedures available to the public;
 - (ii) Declaratory rulings issued pursuant to § 25-15-206; or
 - (iii) Intra-agency memoranda; and
- (9) “Rule making” means agency process for the formulation, amendment, or repeal of a rule.

25-15-203. Rules – Required rules – Public inspection.

- (a) In addition to other rule making requirements imposed by law, each agency shall:
 - (1) Adopt as a rule a description of its organization, stating the general course and method of its operations, including the methods whereby the public may obtain information or make submissions or requests;
 - (2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;
 - (3) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;
 - (4) Make available for public inspection all orders, decisions, and opinions.
- (b) No agency rule, order, or decision shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed and made available for public inspection as required in this subchapter. This provision shall not apply in favor of any person or party with actual knowledge of an agency rule, order, or decision.

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

- (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:
 - (1)
 - (A) Give at least thirty (30) days’ notice of its intended action. The thirty-day period shall begin on the first day of the publication of notice.
 - (B) The notice shall include a statement of the terms or substance of the intended action or a description of the subjects and issues involved, and the time, the place where, and the manner in which interested persons may present their views thereon.
 - (C) The notice shall be mailed to any person specified by law and to all persons who shall have requested advance notice of rule making proceedings.
 - (D) Unless otherwise provided by law, the notice shall be published in a newspaper of general daily circulation for seven (7) consecutive days and, where appropriate, in those trade, industry, or professional publications which the agency may select; and
 - (2)
 - (A) Afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.

- (B) Opportunity for oral hearing must be granted if requested by twenty-five (25) persons, by a government subdivision or agency, or by an association having no fewer than twenty-five (25) members.
 - (C) The agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule and filing the proposed rule as required by subsection (d) of this section.
 - (D) Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.
 - (E) Where rules are required by law to be made on the record after opportunity for an agency hearing, the provisions of that law shall apply in place of this subdivision (a)(2).
- (b) In an agency finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule. The rule may be effective for no longer than one hundred twenty (120) days.
 - (c) Every agency shall accord any person the right to petition for the issuance, amendment, or repeal of any rule. Within thirty (30) days after submission of a petition, the agency shall either deny the petition, stating in writing its reasons for the denial, or shall initiate rule-making proceedings.
 - (d)
 - (1) Every agency, including those exempted under § 25-15-202, shall file with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research a copy of each rule and regulation adopted by it and a statement of financial impact for the rule or regulation.
 - (2) The Secretary of State shall keep a register of the rules open to public inspection, and it shall be a permanent register.
 - (3) Each agency shall provide its regulations to the Bureau of Legislative Research in an electronic format acceptable to the bureau. The bureau shall place the agency regulations in the General Assembly's Internet Web site.
 - (4)
 - (A) The scope of the financial impact statement shall be determined by the agency, but shall include, at a minimum, the estimated cost of complying with the rule and the estimated cost for the agency to implement the rule.
 - (B) If the agency has reason to believe that the development of a financial impact statement will be so speculative as to be cost prohibitive, the agency shall submit a statement and explanation to that effect.
 - (C) If the purpose of a state agency rule or regulation is to implement a federal rule or regulation, the financial impact statement shall be

limited to any incremental additional cost of the state rule or regulation as opposed to the federal rule or regulation.

- (e)
 - (1) Each rule adopted by an agency shall be effective ten (10) days after filing unless a later date is specified by law or in the rule itself.
 - (2)
 - (A) However, an emergency rule may become effective immediately upon filing, or at a stated time less than then (10) days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefore shall be filed with the rule.
 - (B) The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.
- (f) No rule adopted after June 30, 1967, shall be valid unless adopted and filed in substantial compliance with this section.
- (g) In any proceeding brought which questions the existence of imminent peril to the public health, safety, or welfare, a written finding by the agency that adoption of any emergency rule was necessary to avoid the loss of federal funding or certification shall establish a prima facie case of the existence of imminent peril to the public health, safety, or welfare and the burden of proof shall shift to the challenger to rebut the existence of the condition by a preponderance of the evidence.

25-15-205. Rules – “The Arkansas Register.”

- (a) The Secretary of State shall compile, index, and publish a publication to be known as “The Arkansas Register.” This publication shall contain all adopted rules of any agency.
- (b) The Secretary of State shall publish “The Arkansas Register” at least monthly, setting forth a synopsis of rules filed by agencies. A cumulative index shall be published annually.
- (c)
 - (1) “The Arkansas Register” shall be furnished to all state agencies and other persons at prices fixed by the Secretary of State to cover publication and mailing costs.
 - (2) Proceeds from the sale of “The Arkansas Register” shall be deposited in the Constitutional Officers Fund and the State Central Services Fund in the State Treasury.
- (d) A progress report on publication and distribution shall be provided to the Legislative Council annually.
- (e)
 - (1) The Secretary of State shall publish the rules contained in “The Arkansas Register” on its Internet Web site.
 - (2) The Secretary of State may omit from publication on its Internet Web site any rules:
 - (A) That are published on an agency, board, or commission Internet Web site and are accessible at no cost to the public; or

- (B) In which publication would be unduly cumbersome, expensive, or otherwise, so long as its Internet Web site indicates where and how a copy of the omitted materials may be obtained.
- (3) The Secretary of State may adopt regulations implementing the provisions of this section, including, but not limited to, requiring the submission of rules in an acceptable electronic format.

25-15-206. Rules – Declaratory orders.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it. These declaratory orders shall have the same status as agency orders in cases of adjunction.

25-15-207. Rules – Actions for declaratory judgments.

- (a) The validity or applicability of a rule may be determined in an action for declaratory judgment if it is alleged that the rule, or its threatened application, injures or threatens to injure the plaintiff in his person, business, or property.
- (b) The action may be brought in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.
- (c) The agency shall be made defendant in that action.
- (d) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

25-15-208. Administrative adjudication – Procedures generally.

- (a) In every case of adjudication:
 - (1) All parties shall be afforded an opportunity for hearing after reasonable notice.
 - (2) The notice shall include:
 - (A) A statement of the time, place, and nature of the hearing;
 - (B) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (C) A short and plain statement of the matters of fact and law asserted.
 - (3) In every case of adjudication wherein an agency seeks to revoke, suspend, or otherwise sanction a license or permit holder, the agency or its attorney, upon the request of the license or permit holder, must provide the following information prior to conducting a hearing of adjudication:
 - (A) The names and addresses of persons whom the agency intends to call as witnesses at any hearing;
 - (B) Any written or recorded statements and the substance of any oral statements made by the license or permit holder, or a copy of the same;
 - (C) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons, or copies of the same;

- (D) Any books, papers, documents, photographs, or tangible objects which the agency intends to use in any hearing or which were obtained from or belong to the license or permit holder, or copies of the same;
- (E) Disclosure shall not be required of research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the agency or members of his staff or other state agents.
- (4) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.
- (5) The record shall include:
 - (A) All pleadings, motions, and intermediate rulings;
 - (B) Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part thereof;
 - (C) A statement of matters officially noticed;
 - (D) Offers of proof, objections, and rulings thereon;
 - (E) Proposed findings and exceptions thereto; and
 - (F) All staff memoranda or data submitted to the hearing officer or members of an agency in connection with their consideration of the case.
- (6) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- (7) If the agency is authorized by law to issue subpoenas for the attendance and testimony of witnesses and the production of documents or things, then any party shall to the same extent be so authorized, and the agency shall issue a subpoena forthwith on written application thereof.
- (b) Nothing in this subchapter shall prohibit informal disposition by stipulation, settlement, consent order, or default.

25-15-209. Administrative adjudication – Communication by decision maker.

- (a) Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make final or proposed findings of fact or conclusions of law in any case of adjudication shall not communicate, directly or indirectly, in connection with any issue of fact with any person or party nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate.
- (b) An agency member may:
 - (1) Communicate with other members of the agency; and
 - (2) Have the aid and advice of one (1) or more personal assistants.

25-15-210. Administrative adjudication – Decisions.

- (a) When, in a case of adjudication, a majority of the officials of the agency who are to render the decision have not heard the case or read the record, the decision, if adverse to a party other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the

officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary thereto, prepared by the person who conducted the hearing.

- (b)
 - (1) In every case of adjudication, a final decision or order shall be in writing or stated in the record.
 - (2) A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.
- (c) Parties shall be served either personally or by mail with a copy of any decision or order.

25-15-211. Administrative adjudication – Licenses.

- (a) When the grant, denial, or renewal of a license is required by law to be preceded by notice and an opportunity for hearing, the provisions of this subchapter concerning cases of adjudication apply.
- (b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order, or a later date fixed by order of the reviewing court.
- (c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct warranting the intended action and unless the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.
- (d)
 - (1) A complaint filed by an offender with a state licensing board or state licensing agency against a licensee of the board or agency shall not be heard by the board or agency unless the complaint is accompanied by appropriately verified documentation showing that the offender has exhausted all administrative remedies under the Department of Correction grievance procedure.
 - (2) For the purposes of this section, “offender” means any person sentenced to the Department of Correction or sentenced to the Department of Correction for judicial transfer to the Department of Community Punishment or any person confined in a community punishment center as a condition of probation, suspended imposition of sentence, or post prison transfer.

25-15-212. Administrative adjudication – Judicial review.

- (a) In cases of adjudication, any person, except an inmate under sentence to the custody of the Department of Correction, who considers himself or herself injured in his or her person, business, or property by final agency action shall be entitled to judicial review of the action under this subchapter. Nothing in this section shall be construed to limit other means of review provided by law.
- (b)
 - (1) Proceedings for review shall be instituted by filing a petition within thirty (30) days after service upon petitioner of the agency's final decision in:
 - (A) The circuit court of any county in which the petitioner resides or does business; or
 - (B) Pulaski County Circuit Court.
 - (2) Copies of the petition shall be served upon the agency and all other parties of record in accordance with the Arkansas Rules of Civil Procedure.
 - (3) In its discretion, the court may permit other interested persons to intervene.
- (c) The filing of the petition does not automatically stay enforcement of the agency decision, but the agency or reviewing court may do so upon such terms as may be just. However, on review of disciplinary orders issued by professional licensing boards governing professions of the healing arts, the reviewing court, only after notice and hearing, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of review proceedings.
- (d)
 - (1) Within thirty (30) days after service of the petition or within such further time as the court may allow but not exceeding an aggregate of ninety (90) days, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review.
 - (2) The cost of the preparation of the record shall be borne by the agency. However, the cost of the record shall be recovered from the appealing party if the agency is the prevailing party.
 - (3) By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.
 - (4) The court may require or permit subsequent corrections or additions to the record.
- (e) If review proceedings have been instituted in two (2) or more circuit courts with respect to the same order, the agency concerned shall file the record in the court in which a proceeding was first instituted. The other courts in which the proceedings are pending shall thereupon transfer them to the court in which the record has been filed.
- (f) If before the date set for hearing, application is made to the court for leave to present additional evidence and the court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon any conditions which may be just. The agency may modify its findings and decision by reason of the additional evidence and shall file that

evidence and any modifications, new findings, or decisions with the reviewing court.

- (g) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.
- (h) The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision of the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
 - (1) In violation of constitutional or statutory provisions;
 - (2) In excess of the agency's statutory authority;
 - (3) Made upon unlawful procedure;
 - (4) Affected by other error or law;
 - (5) Not supported by substantial evidence of record; or
 - (6) Arbitrary, capricious, or characterized by abuse of discretion.
- (i) Any agency order which is affirmed or affirmed in part by the court shall be a final judgment subject to writ of garnishment or execution to the extent it is affirmed.

25-15-213. Hearings generally.

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

- (1) Any person compelled to appear before any agency or representative thereof shall have the right to be accompanied and advised by counsel. Every party shall have the right to appear in person or by counsel;
- (2)
 - (A) There shall preside at the hearing:
 - (i) The agency;
 - (ii) One (1) or more members of the agency; or
 - (iii) One (1) or more examiners or referees designated by the agency.
 - (B) All presiding officers and all officers participating in decisions shall conduct themselves in an impartial manner and may at any time withdraw if they deem themselves disqualified.
 - (C) Any party may file an affidavit of personal bias or disqualification. The affidavit shall be ruled on by the agency and granted if timely, sufficient, and filed in good faith;
- (3)
 - (A) Presiding officers shall have power, pursuant to published procedural rules of the agency:
 - (i) To issue subpoenas if the agency is authorized by law to issue them;
 - (ii) To administer oaths and affirmations;
 - (iii) To maintain order;

- (iv) To rule upon all questions arising during the course of a hearing or proceeding;
 - (v) To permit discovery by disposition or otherwise;
 - (vi) To hold conferences for the settlement or simplification of issues;
 - (vii) To make or recommend decisions; and
 - (viii) Generally to regulate and guide the course of the pending proceeding.
- (B) In any proceeding before any agency, if any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of an agency contained in its decision rendered after hearing, the agency or the presiding officer of the agency hearing may apply to the circuit court of the county where the proceedings were held or are being held or to the circuit court of the county where a petition for judicial review was filed for an order directing that person to take the requisite action or to otherwise comply with the order of the agency. The court shall issue the order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him or her as for contempt;
- (4) Except as otherwise provided by law, the proponent of a rule or order shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form;
 - (5) Parties shall have the right to conduct such cross examination as may be required for a full and true disclosure of the facts; and
 - (6) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show the contrary.

25-15-214. Failure of agency to act – Action by injured party.

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

25-15-215. Model rules.

(a)

- (1) The Attorney General shall publish model rules of procedure for use by agencies.
 - (2) The model rules shall include general functions and duties commonly preformed by agencies.
- (b)
- (1) Each agency created after August 13, 2001, shall adopt, in accordance with the provisions of this subchapter, those model rules that are practicable.
 - (2) Any agency that adopts a rule of procedure that differs from the model rule, in conjunction with adopting the rule of procedure, shall state the reason why the relevant portions of the model rules are impracticable.

25-15-216. Review of agency rules.

- (a) As soon as is practicable after each regular session of the General Assembly, each agency shall review any newly enacted laws to determine whether:
 - (1) Any existing rule should be repealed or amended; or
 - (2) Any new rule should be adopted.
- (b) At the conclusion of each review, the agency shall adopt a written report of the result of the review.
- (c) A copy of each report shall be maintained as a public record by the agency.

25-15-217. Alternative sanctions.

- (a)
 - (1) Each agency which may suspend, revoke, or deny a license for acts or omissions or other conduct as provided by law may impose alternative sanctions set forth in subsection (b) of this section.
 - (2) The penalties set forth in subsection (b) of this section shall be supplemental to any agency's authority to impose penalties upon any person or entity under the agency's jurisdiction.
- (b) Each agency may impose on any person or entity under the agency's jurisdiction:
 - (1) A monetary penalty not to exceed five hundred dollars (\$500) for each violation;
 - (2) A requirement that the person complete appropriate education programs or courses, or both;
 - (3) A requirement that the person or entity successfully complete:
 - (A) A licensing examination;
 - (B) A credentialing examination; or
 - (C) Any other examination required in order to obtain a permit, license, registration, or credential;
 - (4) Conditions or restrictions upon regulated activities of the holder of a license, permit, certificate, credential, registration, or other authority; and
 - (5) Other requirements or penalties as may be appropriate under the circumstances of the case and which would achieve the agency's desired disciplinary purposes, but which would not impair the public health and welfare.
- (c) The agency may file suit to collect any monetary penalty assessed pursuant to this subchapter, if the penalty is not paid within the time prescribed by the agency, in

- either Pulaski County Circuit Court or the circuit court of any county in which the person or entity under the agency's jurisdiction:
- (1) Resides; or
 - (2) Does business.
- (d) Upon imposition of a sanction against a person or entity under the agency's jurisdiction, the agency may order that the license, permit, certification, credential, or registration be suspended until the person or entity has complied in full with all applicable sanctions imposed pursuant to this section.
- (e)
- (1) Each violation shall constitute a separate violation.
 - (2) The power and authority of the agency to impose a sanction authorized in this section shall not be affected by any other civil or criminal proceeding concerning the same violation.