

# Administrative Procedure 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:

- (1)
  - (A) “Adjudication” means an agency process for the formulation of an order.
  - (B) “Adjudication” does not include inmate disciplinary proceedings conducted by the Division of Correction and the Division of Community Correction;
- (2)
  - (A) “Agency” means a board, commission, department, officer, or other authority of the government of the State of Arkansas, whether within, or subject to review by, another agency, except the General Assembly, the courts, and the Governor.
  - (B) The word “agency” shall include the Division of Child Care and Early Childhood Education and the Child Care Appeal Review Panel for purposes of administrative appeal.
  - (C)
    - (i) Except as provided in subdivision (2)(C)(ii) of this section, the word “agency” shall not include the Arkansas Public Service Commission, the Arkansas Pollution Control and Ecology Commission, the Workers' Compensation Commission, and the Division of Workforce Services, as the existing laws governing those agencies provide adequate administrative procedures for those agencies.
    - (ii) The word “agency” as used in §§ 25-15-216 and 25-15-218 shall include the Arkansas Public Service Commission, the Arkansas Pollution Control and Ecology Commission, the Workers' Compensation Commission, and the Division of Workforce Services.
  - (D) This subchapter does not repeal delegations of authority as provided by law;
- (3) “Financial impact statement” means a realistic statement of a new or increased cost or obligation of complying with a proposed rule to a:
  - (A) Private individual, entity, and business; and
  - (B) State, county, and municipal government;
- (4) “License” includes an agency permit, certificate, approval, registration, charter, or similar form of permission required by law;
- (5) “Licensing” means an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license;

- (6) “Order” means the final disposition of an agency in any matter other than rulemaking, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing;
- (7) “Party” means a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding;
- (8) “Person” means an individual, partnership, corporation, association, or public or private organization of any character;
- (9)
  - (A) “Rule” means an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule.
  - (B) “Rule” does not mean:
    - (i) A statement that concerns the internal management of a state agency and that does not affect the private rights or procedures available to the public;
    - (ii) A declaratory order or ruling issued under § 25-15-206 or other provision of law applicable to the state agency issuing the declaratory order or ruling;
    - (iii) Intra-agency memoranda;
    - (iv) A medical code within the Arkansas Medicaid Program that is issued by the Centers for Medicare & Medicaid Services, including without limitation:
      - (a) Current Procedural Terminology codes;
      - (b) Healthcare Common Procedure Coding System codes;
      - (c) International Classification of Diseases codes;
      - (d) National Uniform Billing Committee Official UB-04 Data Specifications Manual codes; and
      - (e) National Correct Coding Initiative codes;
    - (v) The addition of formatting to one (1) or more rules, including without limitation one (1) or more sections of the Code of Arkansas Rules, in order to create a handbook, manual, pamphlet, or other similar publication for the purpose of packaging or distributing materials for public use, including without limitation the addition of:
      - (a) A cover or title page;
      - (b) A table of contents; or
      - (c) An index;

- (vi) A technical correction under § 25-15-218; or
- (vii)
  - (a) Unless required by law to be promulgated as a rule, a form developed by an agency to implement or interpret a rule.
  - (b) A form under subdivision (9)(B)(vii)(a) of this section shall not contain language that otherwise meets the definition of a rule under subdivision (9)(A) of this section unless:
    - (1) The language is derived from an existing law or rule; and
    - (2) A citation to the existing law or rule is included on the form; and
- (10) “Rulemaking” means an agency process for the formulation, amendment, or repeal of a rule.

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

- (a) In addition to other rulemaking 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; and
  - (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.
- (c) To the extent possible, a rule shall be written in plain language.

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

- (a) Prior to the adoption, amendment, or repeal of a rule, the agency shall:
  - (1)
    - (A)
      - (i) Give at least thirty (30) days' notice of its intended action.
      - (ii) The thirty-day period shall begin on the first day of the publication of notice.

- (B) The notice shall include:
    - (i) A statement of the terms or substance of the intended action or a description of the subjects and issues involved; and
    - (ii) The time, location, and manner in which an interested person may present his or her position on the intended action of the agency or on the issues related to the intended action of the agency.
  - (C) The notice shall be mailed to:
    - (i) A person specified by law; and
    - (ii) A person who has requested advance notice of rulemaking proceedings.
  - (D) Unless otherwise provided by law, the notice shall be published:
    - (i) In a newspaper of general daily circulation for three (3) consecutive days and, when appropriate, in those trade, industry, or professional publications that the agency may select.
    - (ii) By the Secretary of State on the internet for thirty (30) days under § 25-15-218.
  - (E)
    - (i) If enacted legislation requires or results in more than one (1) agency adopting, amending, or repealing rules on a similar subject matter, the agencies may publish a combined notice for all rules.
    - (ii) The combined notice shall:
      - (a) Include:
        - (1) The names of all agencies involved in the collective filing; and
        - (2) The time, location, and manner in which an interested person may present his or her position on the intended action of each agency or on the issues related to the intended action of each agency; and
      - (b) Meet the requirements of subdivisions (a)(1)(C) and (D) of this section;
- (2)
- (A) Afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.
  - (B) The agency shall grant an opportunity for an oral hearing if requested by twenty-five (25) persons, by a governmental subdivision or agency, or by an association having at least 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 (e) of this section.

- (D) If an interested person requests a statement of the reasons for and against the adoption of a rule before adoption or within thirty (30) days after adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating its reasons for overruling the considerations urged against its adoption.
  - (E) When 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).
  - (F) Agencies that publish a combined notice as described in subdivision (a)(1)(E) of this section may hold a joint public hearing when required by law or otherwise desired by the agencies; and
- (3) Consider the following factors:
- (A) Whether the agency is required by statute to adopt the proposed rule, whether by a specific date, and whether the agency has discretion to promulgate rules;
  - (B) Other statutes relevant to the proposed rule and its alternatives;
  - (C) The specific nature and significance of the problem the agency addresses with the proposed rule, including without limitation:
    - (i) The nature and degree of the risks the problem poses;
    - (ii) The priority of addressing those risks as opposed to other matters or activities within the agency's jurisdiction;
    - (iii) Whether the problem warrants new agency action; and
    - (iv) The countervailing risks that may be posed by alternative rules for the agency;
  - (D) Whether existing rules have created or contributed to the problem the agency is addressing with the proposed rule, and whether those rules could be amended or repealed to address the problem in whole or in part;
  - (E) Reasonable alternatives to the proposed rule, including without limitation:
    - (i) Adopting no rule;
    - (ii) Amending or repealing existing rules; and
    - (iii) Other potential responses that could be taken instead of agency action;
  - (F) The financial impact of the proposed rule; and
  - (G) Any other factor relevant to the need for and alternatives to the proposed rule.

- (b)
  - (1) An agency shall not adopt, amend, or repeal a rule unless the rule is based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule.
  - (2) An agency shall adopt the least costly rule considered under this section, unless:
    - (A) The additional benefits of the more costly rule justify its additional cost;
    - (B) The agency explains its reason for adoption of the more costly rule in writing;
    - (C) The reason is based on the interests of public health, safety, or welfare; and
    - (D) The reason is within the scope of the agency's statutory authority.
- (c)
  - (1) If an agency finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or regulation 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.
  - (2) An agency shall not file an emergency rule with the Secretary of State for adoption until the emergency rule has been approved under § 10-3-309.
  - (3) Except as provided in § 5-64-201, the rule may be effective for no longer than one hundred twenty (120) days.
  - (4) If, after the expiration of the effective period of an emergency rule, an agency wishes to adopt a successive emergency rule that is identical or substantially similar to the expired emergency rule, the agency shall not adopt the successive emergency rule earlier than thirty (30) days after the expiration of the emergency rule.
- (d)
  - (1) A person may petition an agency for the issuance, amendment, or repeal of a rule.
  - (2) Within thirty (30) days after submission of a petition, the agency shall:
    - (A) Deny the petition, stating in writing its reasons for the denial; or
    - (B) Initiate rulemaking proceedings.
- (e)
  - (1)
    - (A) An agency shall file with the Secretary of State and the Legislative Council a:
      - (i) Copy of each rule, including without limitation an emergency rule, proposed by the agency;
      - (ii) Financial impact statement for the proposed rule;

- (iii) Notice for the adoption, amendment, or repeal of any rule required to be published on the internet under this section;
  - (iv) Statement setting forth the reason for the proposed rule; and
  - (v) Summary of the proposed rule.
- (B) An agency shall file with the Arkansas State Library a copy of each rule, including without limitation an emergency rule, finalized by the agency and a financial impact statement for the rule.
- (C) A rule shall be filed in compliance with this section and with §§ 10-3-309 and 25-15-218.
- (2) The Secretary of State shall keep a register of the rules open to public inspection, and it shall be a permanent register.
- (3) If the purpose of a state agency rule is to implement a federal rule or regulation, the financial impact statement shall include:
  - (A) The cost to implement the federal rule or regulation; and
  - (B) The additional cost of the state rule.
- (4)
  - (A) If a financial impact statement reveals a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined, the agency shall file written findings at the time of filing the financial impact statement.
  - (B) The written findings shall be filed simultaneously with the financial impact statement and shall include without limitation:
    - (i) A statement of the rule's basis and purpose;
    - (ii) The problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
    - (iii) A description of the factual evidence that:
      - (a) Justifies the agency's need for the proposed rule; and
      - (b) Describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
    - (iv) A list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
    - (v) A list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (vi)
  - (a) A statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.
  - (b) If existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (vii) An agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule, including without limitation whether:
  - (a) The rule is achieving the statutory objectives;
  - (b) The benefits of the rule continue to justify its costs; and
  - (c) The rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.
- (f) An agency shall not file a final rule with the Secretary of State for adoption unless the final rule has been approved under § 10-3-309.
- (g)
  - (1)
    - (A) Each rule adopted by an agency is effective ten (10) days after filing of the final rule with the Secretary of State unless a later date is specified by law or in the rule itself.
    - (B) A final rule shall not be filed until the thirty-day public comment period required under subdivision (a)(1)(A) of this section has expired.
    - (C)
      - (i) After the expiration of the thirty-day public comment period and before the effective date of the rule, the agency promulgating the rule shall take appropriate measures to make the final rule known to the persons who may be affected by the rule.
      - (ii) Appropriate measures shall include without limitation posting the following information on the agency's website:
        - (a) The final rule;
        - (b) Copies of all written comments submitted to the agency regarding the rule;
        - (c) A summary of all written and oral comments submitted to the agency regarding the rule and the agency's response to those comments;
        - (d) A summary of the financial impact of the rule; and
        - (e) The proposed effective date of the final rule.



- (2)
  - (A)
    - (i) However, an emergency rule may become effective immediately upon filing or at a stated time less than ten (10) days after filing if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.
    - (ii) The agency's finding, a brief statement of the reasons for the finding, and the financial impact statement 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 the emergency rules.
- (h) A rule adopted after June 30, 1967, is not valid unless adopted and filed in substantial compliance with this section.
  - (i)
    - (1) In a proceeding that questions the existence of imminent peril to the public health, safety, or welfare, a written finding by an agency that adopting an emergency rule was necessary to avoid the loss of federal funding or certification establishes a prima facie case of the existence of imminent peril to the public health, safety, or welfare.
    - (2) The burden of proof shifts to the challenger to rebut the existence of the condition by a preponderance of the evidence.

**25-15-205. Rules – The Arkansas Register.**

- (a)
  - (1) The Secretary of State shall compile, index, and publish on its website a document to be known as “The Arkansas Register”.
  - (2) The register shall contain:
    - (A) A copy of each rule, including without limitation an emergency rule, proposed by an agency;
    - (B) A financial impact statement for the proposed rule;
    - (C) The notice for the adoption, amendment, or repeal of any rule required to be published on the internet under § 25-15-204;
    - (D) A statement setting forth the reason for the proposed rule; and
    - (E) A summary of the proposed rule.
  - (3) The inclusion of a direct link to an electronic version of the information under subdivision (a)(2) of this section shall satisfy the requirements of this section.

- (4)
  - (A) The Secretary of State may omit from publication in the register any rule in which publication would be unduly cumbersome, expensive, or otherwise impractical.
  - (B) If a rule is omitted from publication under subdivision (a)(4)(A) of this section, the register shall indicate where and how a copy of the omitted rule may be obtained.
- (b) The Secretary of State shall update the register at least monthly no later than the first Tuesday of every month, setting forth a synopsis of rules filed by agencies.
- (c)
  - (1) If requested, a printed copy of the 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 register shall be deposited into 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.

**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 adjudication.

**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 or her 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; and
    - (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 or her 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)
  - (A) 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) A subpoena may be served in the manner as now provided for by statute or rule for the service of subpoenas in civil cases or by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or agent of the addressee.
- (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 or her 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 – Definition.**

- (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 Division of Correction grievance procedure.
  - (2) For purposes of this section, “offender” means any person sentenced to the Division of Correction or sentenced to the Division of Correction for judicial transfer to the Division of Community Correction or any person confined in a community correction 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 Division 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 if 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 deposition 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 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 performed by agencies.
- (a)
  - (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)
  - (1) As soon as is practicable after each regular session and fiscal session of the General Assembly, each agency shall review any newly enacted laws to determine whether:
    - (A) Any existing rule should be repealed or amended; or
    - (B) Any new rule should be adopted.
  - (2) At the conclusion of each review, the agency shall adopt a written report of the result of the review.
  - (3) A copy of each report shall be maintained as a public record by the agency.
- (b)
  - (1) If an agency determines that a newly enacted law requires the repeal or amendment of an existing rule or the adoption of a new rule and the newly enacted law does not provide a specific date for the repeal, amendment, or adoption of the rule, the final version of the new, amended, or repealed rule shall be filed for adoption with the Secretary of State:
    - (A) On or before June 1 of the following year, if the newly enacted law results from a regular or fiscal session of the General Assembly;
    - (B) On or before the one hundred eightieth day following sine die adjournment, if the newly enacted law results from a special session of the General Assembly; or
    - (C) If approval of a rule under § 10-3-309 has not occurred by the date under subdivision (b)(1)(A) or subdivision (b)(1)(B) of this section, as soon as practicable after approval under § 10-3-309.
  - (2) An agency shall file the proposed rule with the Legislative Council, or the Joint Budget Committee if the General Assembly is in regular, fiscal, or extraordinary session, under § 10-3-309 sufficiently in advance of the date under subdivision (b)(1)(A) or subdivision (b)(1)(B) of this section so that the Legislative Council or Joint Budget Committee may consider the rule for approval before the appropriate date.



- (3)
- (A) No later than sixty (60) days following the sine die adjournment of a regular session of the General Assembly, the Bureau of Legislative Research shall file with the Legislative Council a report identifying the rules required by newly enacted laws that it has determined shall be filed for adoption on or before June 1 of the year following a regular session of the General Assembly.
  - (B) The report under subdivision (b)(3)(A) of this section shall only include rules specifically required by a newly enacted law.
  - (C) An agency shall promulgate a rule it determines is required under subdivision (a)(1) of this section regardless of whether the rule appears on the report under subdivision (b)(3)(A) of this section.
- (4) The executive head of an agency or his or her designee shall provide monthly written updates on the agency's progress in promulgating a rule it determines is required under subdivision (a)(1) of this section, including without limitation a rule identified in the report under subdivision (b)(3)(A) of this section, to the Legislative Council or its appropriate subcommittee until the final version of the new, amended, or repealed rule is filed for adoption with the Secretary of State on or before the required date under subdivision (b)(1) of this section.
- (5)
- (A)
    - (i) If an agency fails to file the final version of the new, amended, or repealed rule for adoption as required by subdivision (b)(1) of this section, the executive head of the agency at issue or his or her designee shall appear before the Legislative Council or its appropriate subcommittee on a monthly basis until the final version of the new, amended, or repealed rule is filed for adoption with the Secretary of State.
    - (ii) If the rule the agency failed to file under subdivision (b)(5)(A)(i) of this section resulted from a newly enacted law at a regular session of the General Assembly, the executive head of the agency at issue or his or her designee shall appear before the Legislative Council or its appropriate subcommittee on a monthly basis until the final version of the new, amended, or repealed rule is filed for adoption with the Secretary of State if the final version of the new, amended, or repealed rule has not been filed for adoption by June 1 of the year following the regular session of the General Assembly. An appearance under this subdivision (b)(5)(A)(ii) shall be in lieu of a monthly written update under subdivision (b)(4) of this section.
  - (B) When appearing before the Legislative Council or its appropriate subcommittee, the executive head of the agency at issue or his or her designee shall:
    - (i) Describe why the agency has been unable to comply with subdivision (b)(1) of this section;
    - (ii) Provide an update on the current status of the necessary rule changes;
    - (iii) Describe the steps the agency is taking to address the failure to comply with subdivision (b)(1) of this section; and
    - (iv) Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State.

- (C)
  - (i) An agency shall not be required to appear before the Legislative Council or its appropriate subcommittee under this subdivision (b)(5) if the newly enacted law requiring the new, amended, or repealed rule is the subject of litigation.
  - (ii) The agency shall provide written notification to the Legislative Council or its appropriate subcommittee of the litigation involving the newly enacted law and update the written notification when the litigation is resolved.
- (c)
  - (1) If a newly enacted law specifically requires the adoption of a rule by an agency and the agency believes that a rule is not necessary for the operation of the newly enacted law, it may submit a written request to the Legislative Council or its appropriate subcommittee:
    - (A) Notifying the Legislative Council or its appropriate subcommittee of the agency's intent to not adopt the required rule; and
    - (B) Requesting that the rule it believes is not necessary be excluded from the requirements of subdivisions (b)(3)-(5) of this section.
  - (2) The Legislative Council or its appropriate subcommittee may exclude an agency from the requirements of subdivisions (b)(3)-(5) of this section if it determines that the required rule is not necessary, including without limitation determining that the required rule would merely restate the newly enacted law.

**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.