

FIRST REGULAR SESSION

HOUSE BILL NO. 1074

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHIPMAN.

2037H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 536.140, RSMo, and to enact in lieu thereof one new section relating to administrative proceedings.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 536.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 536.140, to read as follows:

536.140. 1. The court shall hear the case without a jury, **except as provided by subsection 7 of this section**, and, except as otherwise provided in subsection 4 of this section, shall hear it upon the petition and record filed as aforesaid.

2. The inquiry may extend to a determination of whether the action of the agency

(1) Is in violation of constitutional provisions;

(2) Is in excess of the statutory authority or jurisdiction of the agency;

(3) Is unsupported by competent and substantial evidence upon the whole record;

(4) Is, for any other reason, unauthorized by law;

(5) Is made upon unlawful procedure or without a fair trial;

(6) Is arbitrary, capricious or unreasonable;

(7) Involves an abuse of discretion.

The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to sections 536.100 to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 subsection; provided, however, that nothing herein contained shall in any way change or affect
18 the provisions of sections 311.690 and 311.700.

19 3. Whenever the action of the agency being reviewed does not involve the exercise by
20 the agency of administrative discretion in the light of the facts, but involves only the application
21 by the agency of the law to the facts, the court may upon application of any party conduct a de
22 novo review of the agency decision.

23 4. Wherever under subsection 3 of this section or otherwise the court is entitled to weigh
24 the evidence and determine the facts for itself, the court may hear and consider additional
25 evidence if the court finds that such evidence in the exercise of reasonable diligence could not
26 have been produced or was improperly excluded at the hearing before the agency. Wherever the
27 court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that
28 there is competent and material evidence which, in the exercise of reasonable diligence, could
29 not have been produced or was improperly excluded at the hearing before the agency, the court
30 may remand the case to the agency with directions to reconsider the same in the light of such
31 evidence. The court may in any case hear and consider evidence of alleged irregularities in
32 procedure or of unfairness by the agency, not shown in the record.

33 5. The court shall render judgment affirming, reversing, or modifying the agency's order,
34 and may order the reconsideration of the case in the light of the court's opinion and judgment,
35 and may order the agency to take such further action as it may be proper to require; but the court
36 shall not substitute its discretion for discretion legally vested in the agency, unless the court
37 determines that the agency decision was arbitrary or capricious.

38 6. Appeals may be taken from the judgment of the court as in other civil cases.

39 7. **A person seeking judicial review of an agency's final decision has the right to a**
40 **jury trial if the case involves a contested question of fact or mixed questions of law and**
41 **fact. If judicial review is conducted by a jury trial, the jury shall be selected in accordance**
42 **with the rules governing civil actions in civil court. Failure to include a demand for a jury**
43 **trial in the petition for review constitutes a waiver of the right to a jury trial.**

✓