

REFERENCE TITLE: administrative decisions; review; scope

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2238

Introduced by
Representative Farnsworth E

AN ACT

AMENDING SECTION 12-910, ARIZONA REVISED STATUTES; RELATING TO
ADMINISTRATIVE DECISIONS.

(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 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 41-1092.11, pursuant to
24 section 41-1092.02, the trial shall be de novo if trial de novo is
25 demanded in the notice of appeal or motion of an appellee other than the
26 agency and if a hearing was not held by the agency or the proceedings
27 before the agency were not stenographically reported or mechanically
28 recorded so that a transcript might be made. On demand of any party, if a
29 trial de novo is available under this section, it may be with a jury,
30 except that a trial of an administrative decision under section 25-522
31 shall be to the court.

32 D. The record in the superior court shall consist of the record of
33 the administrative proceeding, and the record of any evidentiary hearing,
34 or the record of the trial de novo.

35 E. After reviewing the administrative record and supplementing
36 evidence presented at the evidentiary hearing, the court may affirm,
37 reverse, modify or vacate and remand the agency action. The court shall
38 affirm the agency action unless the court concludes that the agency's
39 action ~~is contrary to law~~, is not supported by substantial evidence, is
40 arbitrary and capricious or is an abuse of discretion. **THE COURT SHALL
41 REVERSE, MODIFY OR VACATE AND REMAND THE AGENCY ACTION IF THE COURT
42 DETERMINES THE AGENCY'S ACTION WAS CONTRARY TO LAW. IN A PROCEEDING TO
43 REVIEW ANY FINAL ADMINISTRATIVE DECISION OF AN AGENCY BROUGHT BY THE
44 REGULATED PARTY AGAINST WHOM THE ADMINISTRATIVE DECISION WAS ENTERED, THE
45 COURT SHALL DECIDE ALL QUESTIONS OF LAW, INCLUDING THE INTERPRETATION OF A**

1 CONSTITUTIONAL OR STATUTORY PROVISION OR A RULE ADOPTED BY AN AGENCY,
2 WITHOUT REGARD TO ANY PREVIOUS DETERMINATION THAT MAY HAVE BEEN MADE ON
3 THE QUESTION IN AN ADMINISTRATIVE DECISION. NOTWITHSTANDING ANY OTHER
4 LAW, THIS SUBSECTION APPLIES IN ANY ACTION FOR JUDICIAL REVIEW OF ANY
5 AGENCY ACTION THAT IS AUTHORIZED BY LAW.

6 F. NOTWITHSTANDING SUBSECTION E OF THIS SECTION, IF THE ACTION
7 ARISES OUT OF TITLE 20, CHAPTER 15, ARTICLE 2, THE COURT SHALL AFFIRM THE
8 AGENCY ACTION UNLESS AFTER REVIEWING THE ADMINISTRATIVE RECORD AND
9 SUPPLEMENTING EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING THE COURT
10 CONCLUDES THAT THE ACTION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IS
11 CONTRARY TO LAW, IS ARBITRARY AND CAPRICIOUS OR IS AN ABUSE OF DISCRETION.

12 G. THIS SECTION DOES NOT APPLY TO ANY AGENCY ACTION BY AN AGENCY
13 THAT IS CREATED PURSUANT TO ARTICLE XV, CONSTITUTION OF ARIZONA.